

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4 Adv. Case No. 19-08250-rdd

5 - - - - - x

6 In the Matter of:

7
8 SEARS HOLDINGS CORPORATION, et al.,

9

10 Debtors.

11 - - - - - x

12 SEARS HOLDINGS CORPORATION et al.,

13 Plaintiffs,

14 v.

15 LAMPERT et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 300 Quarropas Street, Room 248

20 White Plains, NY 10601

21

22 August 31, 2022

23 10:10 AM

24

25

Page 2

1 B E F O R E :
2 HON ROBERT D. DRAIN
3 U.S. BANKRUPTCY JUDGE
4

5 ECRO: JUSTIN WALKER
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1 HEARING re Application for Interim Professional Compensation
2 / Tenth Application of Weil, Gotshal & Manges LLP, as
3 Attorneys for the Debtors, for Interim Allowance of
4 Compensation for Professional Services Rendered and
5 Reimbursement of Actual and Necessary Expenses Incurred
6 period: 11/1/2021 to 2/28/2022, fee:\$1,574, 106.50,
7 expenses: \$213,032.12. filed by Weil, Gotshal & Manges LLP.
8 (ECF #10401)

9
10 HEARING re Notice of Hearing on Interim Applications for
11 Allowance of Compensation and Reimbursement of Expenses on
12 May 26, 2022 at 10:00 A.M. (related document(s) 10397,
13 10396, 10401, 10399, 10398) filed by Garrett A. Fail on
14 behalf of Sears Holdings Corporation. (ECF #10406)

15
16 HEARING re Status Report Fee Examiner's Eighth Status Report
17 Regarding Review of Interim Fee and Expense Applications
18 Filed by Chantelle D. McClamb on behalf of Fee Examiner.
19 (ECF #10440)

Page 4

1 HEARING re Application for Interim Professional Compensation
2 / Tenth Application of Weil, Gotshal & Manges LLP, as
3 Attorneys for the Debtors, for Interim Allowance of
4 Compensation for Professional Services Rendered and
5 Reimbursement of Actual and Necessary Expenses Incurred
6 period: 11/1/2021 to 2/28/2022, fee:\$1,574,106.50, expenses:
7 \$213,032.12. filed by Weil, Gotshal & Manges LLP. (ECF
8 #10401)

9
10 HEARING re Notice of Hearing on Interim Applications for
11 Allowance of Compensation and Reimbursement of Expenses on
12 May 26, 2022 at 10:00 A.M. (related document(s)10397, 10396,
13 10401, 10399, 10398) filed by Garrett A. Fail on behalf of
14 Sears Holdings Corporation. (ECF #10406)

15
16 HEARING re Status Report Fee Examiner's Eighth Status Report
17 Regarding Review of Interim Fee and Expense Applications
18 Filed by Chantelle D, McClamb on behalf of Fee Examiner.
19 (ECF #10440)

1 HEARING re Application for Interim Professional Compensation
2 /Tenth Interim Fee Application of Akin Gump Strauss Hauer &
3 Feld LLP as Counsel to the Official Committee of Unsecured
4 Creditors for Allowance of Compensation for Services
5 Rendered and Reimbursement of Expenses for the Period:
6 11/1/2021 to 2/28/2022, fee:\$536,639.00, expenses:
7 \$44,946.53. filed by Akin Gump Strauss Hauer & Feld LLP.
8 (Dublin, Philip) (ECF #10398)

9
10 HEARING re Notice of Hearing on Interim Applications for
11 Allowance of Compensation and Reimbursement of Expenses on
12 May 26, 2022 at 10:00 A.M. (related document(s)10397, 10396,
13 10401, 10399, 10398) filed by Garrett A. Fail on behalf of
14 Sears Holdings Corporation. (ECF #10406)

15
16 HEARING re Related Documents: Status Report Fee Examiner's
17 Eighth Status Report Regarding Review of Interim Fee and
18 Expense Applications Filed by Chantelle D. McClamb on behalf
19 of Fee Examiner. (ECF #10440)

20
21 HEARING re Response to Motion Administrative Expense Claims
22 Representative's Reservation of Rights Regarding Interim Fee
23 Application Of Akin Gump Strauss Hauer & Feld LLP (related
24 document(s)10398) filed by Eric Mark Kay on behalf of Gary
25 Polkowitz. (ECF #10443)

1 HEARING re Application for Interim Professional Compensation
2 /Tenth Interim Application of FTI Consulting, Inc.,
3 Financial Advisor to the Official Committee of Unsecured
4 Creditors of Sears Holdings Corporation, et al. for Interim
5 Allowance of Compensation and Reimbursement of Expenses for
6 the Period: 11/1/2021 to 2/28/2022, fee:\$80,462.00,
7 expenses: \$0.00. filed by FTI Consulting, Inc. (ECF #10399)

8
9 HEARING re Notice of Hearing on Interim Applications for
10 Allowance of Compensation and Reimbursement of Expenses on
11 May 26, 2022 at 10:00 A.M. (related document(s)10397, 10396,
12 10401, 10399, 10398) filed by Garrett A. Fail on behalf of
13 Sears Holdings Corporation. (ECF #10406)

14
15 HEARING re Related Document: Status Report Fee Examiner's
16 Eighth Status Report Regarding Review of Interim Fee and
17 Expense Applications Filed by Chantelle D. McClamb on behalf
18 of Fee Examiner. (ECF #10440)

1 HEARING re Application for Interim Professional Compensation
2 /Seventh Interim Fee Application of Herrick, Feinstein LLP
3 as Special Conflicts Counsel to the Official Committee of
4 Unsecured Creditors for Allowance of Compensation for
5 Services Rendered and Reimbursement of Expenses for the
6 Period: 11/1/2021 to 2/28/2022, fee:\$46,688.00, expenses:
7 \$509.69. filed by Herrick, Feinstein LLP. (ECF #10396)

8
9 HEARING re Notice of Hearing on Interim Applications for
10 Allowance of Compensation and Reimbursement of Expenses on
11 May 26, 2022 at 10:00 A.M. (related document(s)10397, 10396,
12 10401, 10399, 10398) filed by Garrett A. Fail on behalf of
13 Sears Holdings Corporation. (ECF #10406)

14
15 HEARING re Related Document: Status Report Fee Examiner's
16 Eighth Status Report Regarding Review of Interim Fee and
17 Expense Applications Filed by Chantelle D. McClamb on behalf
18 of Fee Examiner, (ECF #10440)

1 HEARING re Monthly Fee Statement and Tenth Interim Fee
2 Application of Kroll Restructuring Administration LLC, as
3 Administrative Agent to the Debtors, for Services Rendered
4 and Reimbursement of Expenses for (I) The Combined Monthly
5 Fee Period from January 1, 2022 through February 28, 2022
6 and (II) The Interim Fee Period of November 1, 2021 through
7 February 28, 2022 filed by Kroll Restructuring
8 Administration LLC. (ECF #10397)
9
10 HEARING re Notice of Hearing on Interim Applications for
11 Allowance of Compensation and Reimbursement of Expenses on
12 May 26, 2022 at 10:00 A.M. (related document(s) 10397, 10396,
13 10401, 10399, 10398) filed by Garrett A. Fail on behalf of
14 Sears Holdings Corporation. (ECF #10406)
15
16 HEARING re Related Document: Status Report Fee Examiner's
17 Eighth Status Report Regarding Review of Interim Fee and
18 Expense Applications Filed by Chantelle D. McClamb on behalf
19 of Fee Examiner. (ECF #10440)
20
21
22
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1 HEARING re Application for Interim Professional Compensation
2 Ninth Joint Application of Paul E. Harner, as Fee Examiner
3 and Ballard Spahr LLP, as Counsel to the Fee Examiner, for
4 Interim Allowance of Compensation for Professional Services
5 Rendered and Reimbursement, period: 11/1/2021 to 2/28/2022,
6 fee:\$269,013.50, expenses: \$111.60 filed by Fee Examiner.
7 (ECF #10409)

8
9 HEARING re Supplemental Notice of Hearing on Interim
10 Applications for Allowance of Compensation and Reimbursement
11 of Expenses on May 26, 2022 at 10:00 A.M. (related
12 document(s)10409, 10406) filed by Garrett A. Fail on behalf
13 of Sears Holdings Corporation. (ECF #10410)

14
15 HEARING re Related Document: Status Report Fee Examiner's
16 Eighth Status Report Regarding Review of Interim Fee and
17 Expense Applications Filed by Chantelle D. McClamb on behalf
18 of Fee Examiner. (ECF #10440)

19
20 HEARING re Fourth Application for Interim Professional
21 Compensation for the period March 1, 2021 through September
22 30, 2021 for Morritt Hock & Hamroff LLP, Special Counsel,
23 period: 3/1/2021 to 9/30/2021, fee:\$17,883.50, expenses:
24 \$7.40. filed by Morritt Hock & Hamroff LLP. (ECF #10217)

25

1 HEARING re Supplemental Notice of Hearing on Interim
2 Applications for Allowance of Compensation and Reimbursement
3 of Expenses on May 26, 2022 at 10:00 A.M. (related
4 document(s)10406, 10217) filed by Garrett A. Fail on behalf
5 of Sears Holdings Corporation. (ECF #10411)

6
7 HEARING re Related Document: Status Report Fee Examiner's
8 Eighth Status Report Regarding Review of Interim Fee and
9 Expense Applications Filed by Chantelle D. McClamb on behalf
10 of Fee Examiner. (ECF #10440)

11
12 HEARING re Application for Interim Professional Compensation
13 / Fourth Interim Fee Application of Deloitte Tax LLP for
14 Compensation for Services Rendered as Tax Services Provider,
15 period: 11/1/2019 to 3/31/2020, fee:\$53,422.00, expenses:
16 \$0.00. filed by Garrett A. Fail. (ECF #10433)

17
18 HEARING re Notice of Hearing on Interim Applications for
19 Allowance of Compensation and Reimbursement of Expenses on
20 June 29, 2022 at 10:00 a.m. (related document(s)10434,
21 10433) filed by Garrett A. Fail on behalf of Sears Holdings
22 Corporation. (ECF #10442)

1 HEARING re Related Document: Status Report Fee Examiner's
2 Eighth Status Report Regarding Review of Interim Fee and
3 Expense Applications Filed by Chantelle D, McClamb on behalf
4 of Fee Examiner. (ECF #10440)

5
6 HEARING re Application for Interim Professional Compensation
7 / Fifth Interim Fee Application of Deloitte Tax LLP for
8 Compensation for Services Rendered as Tax Services Provider,
9 period: 4/1/2020 to 12/31/2021, fee:\$257,411.50, expenses:
10 \$0.00. filed by Garrett A. Fail. (ECF #10434)

11
12 HEARING re Notice of Hearing on Interim Applications for
13 Allowance of Compensation and Reimbursement of Expenses on
14 June 29, 2022 at 10:00 a.m. (related document(s)10434,
15 10433) filed by Garrett A. Pail on behalf of Sears Holdings
16 Corporation. (ECF #10442)

17
18 HEARING re Related Document: Status Report Fee Examiner's
19 Eighth Status Report Regarding Review of Interim Fee and
20 Expense Applications Filed by Chantelle D, McClamb on behalf
21 of Fee Examiner. (ECF #10440)

1 HEARING re Application for Final Professional Compensation
2 of Wollmuth Maher & Deutsch LLP. filed by James N. Lawlor.
3 (Attachments: # 1 Exhibit A #2 Exhibit B #3 Exhibit C) (ECF
4 #10452)

5
6 HEARING re Notice of Hearing on Final Fee Applications for
7 Allowance of Compensation and Reimbursement for Expenses on
8 June 29, 2022, at 10:00 a.m. (related document(s)10453,
9 10452) filed by Garrett A. Fail on behalf of Sears Holdings
10 Corporation. (ECF #10460)

11
12 HEARING re Application for Final Professional Compensation
13 of Law Offices of Michael M. Mulder. filed by James N,
14 Lawlor. (ECF #10453)

15
16 HEARING re Notice of Hearing on Final Fee Applications for
17 Allowance of Compensation and Reimbursement for Expenses on
18 June 29, 2022, at 10:00 a.m. (related document(s)10453,
19 10452) filed by Garrett A. Fail on behalf of Sears Holdings
20 Corporation. (ECF #10460)

1 HEARING re Motion to Authorize /Motion of the Official
2 Committee of Unsecured Creditors for Entry of an Order
3 Pursuant to Bankruptcy Code Sections 105, 362, 364 and 1142
4 and Bankruptcy Rules 3020(d), 4001 and 9014 Authorizing
5 Entry by the Debtors' Estates into the Litigation Funding
6 Arrangement with Bench Walk 21p, LP, filed by Ira 8.
7 Dizengoff on behalf of Official Committee of Unsecured
8 Creditors of Sears Holdings Corporation, et al. (ECF
9 #10407)

10
11 HEARING re Affidavit of Service of Victor Wong Regarding
12 Motion of the Official Committee of Unsecured Creditors for
13 Entry of an Order Authorizing Entry by the Debtors' Estates
14 into the Litigation Funding Arrangement with Bench Walk 21p,
15 L.P. (related document(s)10407) Filed by Adam M. Adler on
16 behalf of Kroll Restructuring Administration LLC. (ECF
17 #10413)

1 HEARING re Notice of Hearing on Motion of the Official
2 Committee of Unsecured Creditors for Entry of an Order
3 Pursuant to Bankruptcy Code Sections 105, 362, 364 and 1142
4 and Bankruptcy Rules 3020(d), 4001 and §014 Authorizing
5 Entry by the Debtors Estates into the Litigation Funding
6 Arrangement with Bench Walk 21p, L.P. (related
7 document(s)10407) filed by Ira S. Dizengoff on behalf of
8 Official Committee of Unsecured Creditors of Sears Holdings
9 Corporation, et al. (ECF #10454)

10
11 HEARING re Notice of Hearing on Motion of the Official
12 Committee of Unsecured Creditors for Entry of an Order
13 Pursuant to Bankruptcy Code Sections 105, 362, 364 and 1142
14 and Bankruptcy Rules 3020(d), 4001 and 9014 Authorizing
15 Entry by the Debtors Estates into the Litigation Funding
16 Arrangement with Bench Walk 21p, L.P, (related
17 document(s)10407) (ECF #10454)

18
19 HEARING re Objection to Motion Relator Carl Irelands Limited
20 Objection to the Motion of the Official Committee of
21 Unsecured Creditors for Entry of an Order Pursuant to
22 Bankruptcy Code Sections 105, 362, 364 and 1142 and
23 Bankruptcy Rules 3020(d), 4001 and 9014 Authorizing Entry by
24 the Debtors Estates Into the Litigation Funding Arrangement
25 with Bench Walk 21p, L.P. (related document(s)10407) (ECF

1 #10408)
2
3 HEARING re Objection to Motion of the Official Committee of
4 Unsecured Creditors for Entry of an Order Pursuant to
5 Bankruptcy Code Section 105, 363, 364 and 1142 and
6 Bankruptcy Rules 3020(D), 4001, and 9014 Authorizing Entry
7 by the Debtors Estates into the Litigation Funding
8 Arrangement with Bench Walk 21p L.P. (related
9 document(s)10407) filed by Joseph E. Sarachek on behalf of
10 A&A HK Industrial, AMW Vietnam Co. Ltd., Helen Andrews Inc.,
11 Mansheen Industries, Ltd., Mien Co., Ltd., Mingle Fashion
12 Limited, Purcell Murray, Samil Solutions, Shanghai Fochier,
13 Strong Progress Garment Factory Company LTD. (ECF #10485)
14
15 HEARING re Motion for Objection to Claim(s) Number: 26186 of
16 Texas Comptroller of Public Accounts on Behalf of the State
17 of Texas and Local Sales Tax Jurisdictions, and (B) Motion
18 for Turnover of Property of the Estate and Application of
19 Funds Owed to Debtors in Satisfaction of Claims 20615,
20 26368, 20373, and 20614, or, in the Alternative, (C) Motion
21 for an Order, Pursuant to Sections 105(A) and 502(C) of the
22 Bankruptcy Code, Estimating Claims with hearing to be held
23 on 6/29/2022 at 10:00 AM at Courtroom TBA, White Plains
24 Courthouse (RDD) Responses due by 6/17/2022, filed by David
25 Evan Otero on behalf of Sears Holdings Corporation.

1 HEARING re Objection to Motion Objection of Wilmington
2 Trust, National Association, as Indenture Trustee and
3 Collateral Agent, to Motion of the Official Committee of
4 Unsecured Creditors for Entry of an Order Pursuant to
5 Bankruptcy Code Sections 105, 362, 364, and 1142 and
6 Bankruptcy Rules 3020(D), 4001 and 9014 Authorizing Entry by
7 the Debtors' Estates into the Litigation Funding Arrangement
8 with Bench Walk 21P, L.P. (related document(s) 10407) filed
9 by Edward M. Fox on behalf of Wilmington Trust, National
10 Association. (ECF #10486)

11
12 HEARING re Objection to Motion OF THE OFFICIAL COMMITTEE OF
13 UNSECURED CREDITORS FOR ORDER AUTHORIZING LITIGATION FUNDING
14 WITH BENCH WALK 2ip, L.P. [Doc. 10407] AND JOINDER TO
15 OBJECTION OF WILMINGTON TRUST, NATIONAL ASSOCIATION, AS
16 INDENTURE TRUSTEE AND COLLATERAL AGENT [Doc. 10486] (related
17 document(s) 10407) filed by Alexander Tiktin on behalf of
18 Orient Craft Ltd. (ECF #10490)

19
20 HEARING re Motion to Approve Motion to be Listed as a
21 Priority Debt, Demand Acknowledgement of Employment and Type
22 of Work Performed (ECF #10487)

23
24
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1 HEARING re Motion to Approve (CORRECTING HEARING DATE Motion
2 to be Listed as a Priority Debt, Demand Acknowledgement of
3 Employment and Type of Work Performed (related to ECF
4 #10487) (ECF #10488)

5
6 HEARING re Response to Motion of the Official Committee of
7 Unsecured Creditors for Entry of an Order Pursuant to
8 Bankruptcy Code Section 105, 363, 364 and 1142 and
9 Bankruptcy Rules 3020(D), 4001, and 9014 Authorizing Entry
10 by the Debtors Estates into the Litigation Funding
11 Arrangement with Bench Walk 21p L.P. (related
12 document(s)10407) filed by Brian P. Morgan on behalf of
13 Whitebox Multi-Strategy Partners, LP. (ECF #10496)

14
15 HEARING re Adversary proceeding: 19-08250-rdd Sears Holdings
16 Corporation et al v. Lampert et al
17 Joint Motion to Approve Compromise / Joint Motion of Debtors
18 and Official Committee of Unsecured Creditors for Entry of
19 an Order Approving Settlement Agreements, Granting Certain
20 Related Relief, and Authorizing Certain Nonmaterial Plan
21 Modifications in Furtherance of the Effective Date of the
22 Plan

23
24
25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2
3 WEIL, GOTSHAL & MANGES, LLP

4 Attorneys for the Debtor

5 767 Fifth Avenue

6 New York, NY 10153

7
8 BY: GARRETT A. FAIL

9 RAY C. SCHROCK

10
11 HOLWELL SHUSTER & GOLDBERG LLP

12 Attorney for Kunal Kamalani

13 425 Lexington Avenue 14th floor

14 New York, NY 10017

15
16 BY: DANIEL P GOLDBERG

17
18 BALLARD SPAHR LLP

19 Attorney for Fee Examiner

20 1675 Broadway, 19th floor

21 New York, NY 10019

22
23 BY: TOBEY M. DALUZ

1 FAEGRE DRINKER BIDDLE & REATH LLP

2 Attorney for Ad Hoc Group of Admin Claimants

3 1177 6th Avenue, 41st floor

4 New York, NY 10036

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6 BY: BRIAN P. MORGAN

7
8 AKIN GUMP STRAUSS HAUER & FELD LLP

9 Attorney for Official Committee of Unsecured Creditors

10 Bank of America Tower

11 1 Bryant Park

12 New York, NY 10036

13
14 BY: IRA S. DIZENGOFF

15 DEAN CHAPMAN

16 SARA BRAUNER

17
18 DAVIDOFF HUTCHER & CITRON

19 Attorney for HK Sino-Thai Trading Company

20 605 3rd Avenue

21 New York, NY 10158

22
23 BY: DAVID WANDER

1 SEYFARTH SHAW LLP

2 Attorney for Wilmington Trust, National Association

3 233 S Wacker Dr # 8000

4 Chicago, IL 60606

5

6 BY: EDWARD M. FOX

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8 MORGAN, LEWIS & BOCKIUS LLP

9 Attorney for Whitebox Multi-Strategy Partners, LP

10 101 Park Avenue

11 New York, NY 10178

12

13 BY: MELISSA Y. BOEY

14

15 WILMER, CUTLER, PICKERING, HALE AND DORR

16 Attorney for Mr. Lampert and the ESL defendants

17 250 Greenwich Street, 45th Floor

18 New York, New York 10007

19

20 BY: PHILIP D. ANKER

21

22

23

24

25

Page 21

1 QUINN EMANUEL

2 Attorney on behalf of Admin Expense Claims

3 Representative

4 1300 I St NW #900

5 Washington, DC 20005

6
7 BY: ERIKA MORABITO

8
9 MILBANK

10 Attorneys for Cyrus

11 55 Hudson Yards

12 New York, NY 10001

13
14 BY: ANDREW J. LEBLANC

15 ERIC REIMER

16 TOM KRELLER

17
18 HALPERIN BATTAGLIA BENZIJA, LLP

19 Attorney for Relator Carl Ireland

20 40 Wall Street

21 New York, NY 10005

22
23 BY: ALAN D. HALPERIN

1 LOCKE LORD LLP
2 Attorney for PBGC
3 Brookfield Place
4 200 Vesey Street
5 New York, NY 10281

6
7 BY: BRIAN RAYNOR

8
9 ALSO PRESENT TELEPHONICALLY:

10 BRIAN J. GRIFFITH
11 BILL MURPHY
12 PATRICK J. BARTELS JR.
13 RYAN BARTLEY
14 PAUL BASTA
15 ROBERT BRITTON
16 GABRIEL BRUNSWICK
17 CHRISTOPHER CARTY
18 RACHEL M. CHERINGTON
19 KELLEY A. CORNISH
20 THERESA A. DRISCOLL
21 PHILIP DUPLIN
22 KEITH FISCHER
23 EDWARD M. FOX
24 JARED R. FRIEDMANN
25 LESLIE C. HELLMAN

1 MICHAEL COURTNEY KEATS
2 HOORI KIM
3 JENNIFER S. KOOKOGEY-LAJOIE
4 THOMAS R. KRELLER
5 ZACHARY LANIER
6 JAMES LAWLOR
7 NOAH LEVINE
8 SIDNEY P. LEVINSON
9 SCOTT BRIAN LUFTGLASS
10 COURTNEY MORGAN
11 MICHAEL M. MULDER
12 BILL MURPHY
13 BRITTANY J. NELSON
14 SEAN E. O'DONNELL
15 SEAN O'NEAL
16 RYANNE PERIO
17 ALLYSON PIERCE
18 GARY POLKOWITZ
19 LAUREL D. ROGLEN
20 ELIZA RONALDS-HANNON
21 JOSEPH E. SARACHEK
22 PAUL KENAN SCHWARTZBERG
23 COURTNEY SOLOMON
24 SAMUEL STAR
25 JOSEPH SZYDLO

1 ANDREW THAU
2 DAVID ZENSKY
3 ANDREW DEVORE
4 ANDREW FRACKMAN
5 BRIAN D. GLUECKSTEIN
6 MATTHEW GURGEL
7 LESLIE C. HEILMAN
8 THOMAS ROSS HOOPER
9 MARK J. HYLAND
10 THOMAS KRELLER
11 NOAH LEVINE
12 DANIEL SHAMAH
13 ERICA WEISGERBER
14 NOVA A. ALINDOGAN
15 ANNE AUFHAUSER
16 NATAN BANE
17 BRIANNA B BILTER
18 MICHAEL J. BIMKRANT
19 SOMA BISWAS
20 KEVIN ECKHARDT
21 JACK EYERS
22 MATT FERNAND
23 KEITH FISCHER
24 UDAY GORREPATI
25 TAYLOR HARRISON

1 WAYNE KELLNER
2 DIETRICH KNAUTH
3 STEPHANIE P. LASCANO
4 DONNA H. LIEBERMAN
5 KYLE A LONERGAN
6 JUSTIN ORMAND
7 MELISSA PETTIT
8 KEITH D ROFLAND
9 BRAD ERIC SCHELER
10 ANDREW SCURRIA
11 PETER B. SIROKA
12 CHRISTOPHER STAUBLE
13 MICHAEL P. STEMHELM
14 ANDREW THAU
15 ALEXANDER TIKTIN
16 MARGARET A VESPER
17 PHILIP WEINTRAUB
18 ALEX WOLF
19 OWEN RICHARD WOLFE
20 MELANIE WESTOVER YANEZ
21 BRUICE BERKOWITZ
22 ROBERT HONEYWELL
23 KUNAL KAMLANI
24 TYLER F. KUSMA
25 JUSTIN ORMAND

Page 26

1 MELISSA PETTIT

2 JOEL W. STERNMAN

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1 P R O C E E D I N G S

2 THE COURT: Okay, good morning. This is Judge
3 Drain and we're here in In Re: Sears Holding Corporation,
4 et al. I have the amended agenda for today's hearings and
5 I'm happy to go down in the order of the agenda.

6 MR. SCHROCK: Excellent. Thanks very much, Your
7 Honor. Hear me okay?

8 THE COURT: Yes, I hear you fine. Thanks.

9 MR. SCHROCK: Great. Your Honor, for the record,
10 Ray Schrock, Weil, Gotshal, and Manges, counsel for the
11 Debtor. I'm joined this morning by my partner, Garrett
12 Fail.

13 MR. FAIL: Morning, Your Honor.

14 THE COURT: Morning.

15 MR. SCHROCK: We also have with us from the
16 Debtors in the virtual courtroom Brian Griffith and William
17 Murphy from M-3 Advisory Partners as well as Paul Weiss
18 attorneys are on the line. They represented the independent
19 directors of the Debtors in connection with their
20 investigation, among other (indiscernible).

21 THE COURT: Okay.

22 MR. SCHROCK: Additional Debtors' advisors are
23 also on the line and as are members of the Debtors' board of
24 directors who are listening in. Thanks to all of them for
25 all of their hard work in getting this here today, and Your

1 Honor, before I get started, I would just like to thank the
2 Court, for taking the time to hear these significant matters
3 today.

4 We're at a very important point in the cases and
5 on the precipice, we believe, subject to this Court's
6 approval, going a long-awaited effective date and for the
7 plan -- Chapter 11 plan in these cases. I know the Court
8 knows very well what it took to get to this point, and we
9 thought it was very important to do everything possible to
10 preside -- to have Your Honor preside over today's hearing.

11 We would also like to thank all of the parties in
12 -- that it took to get here. It took a lot of compromise
13 and, you know, literally years' worth of work to get to this
14 point and, you know, there are -- some people say that it
15 takes a village, for an extraordinary, may have taken a
16 couple villages. It was very, very difficult to get here.

17 We did file and amended order as well as -- at ECF
18 10622 this morning, that was bringing together final term of
19 a settlement between Cyrus and PBGC relating to some matters
20 that allow, we think, and expedite the effective date to
21 occur.

22 Your Honor, first on the agenda is the joint
23 motion of the Debtors and the Creditors Committee for
24 approval of certain settlements that resolve years of
25 litigation and open disputes. I will let our colleagues at

1 Akin present the details and answer any questions, but I
2 would like to just add a few points that merit approval of
3 the settlement.

4 First of all, Your Honor, the settlement's
5 unopposed, which I think in these cases, speaks very loudly.
6 Settlement sets the Debtors on a path for the plan effective
7 date. It will get over \$180 million to the Debtors which
8 will enable the Debtors to, among other things, satisfy
9 allowed and reserved for disputed secured administrative
10 priority claims on the effective date, reserve funds for
11 liquidating trust wind down activities, and with the consent
12 of the PBGC, still make an initial \$10 million distribution
13 on the PBGC's priority claim, a \$10 million payment to the
14 alleged 507 super priority claimant, Cyrus.

15 We expect that the effective date in these cases
16 can occur within roughly 30 days of receipt of the
17 settlement proceeds. We'll do everything possible, subject
18 to this Court's approval, to make that occur even faster,
19 but think it's about roughly 30 days to get the settlement
20 proceeds in and then really it's just mechanical, just
21 pushing out the funds after that.

22 I'd also just like to mention that, you know, the
23 Court-approved mediators were instrumental in getting to
24 this point. Judges Chapman, former Judge Peck, Mr. Melnick,
25 were available, engaged, frankly above and beyond what, you

1 know, we have seen even in my practice for involvement in
2 trying to get the parties in a multi-faceted, complex case
3 to come together.

4 And as a matter of process, for this first motion,
5 the Debtors would like to introduce as evidence the two
6 declarations what were filed in support of the motion.
7 Those are the declaration of Patrick Bartels filed at ECF
8 No. 10567 and the declaration of Brian Griffith filed at ECF
9 No. 10568.

10 THE COURT: Okay. I've reviewed each of those
11 declarations. Is Mr. Bartels on the line --

12 MR. SCHROCK: Present.

13 THE COURT: Okay.

14 MR. BARTELS: Here, Your Honor.

15 THE COURT: There's a lot of pictures on the
16 screen. I'm just trying to locate you. If you could say
17 your name again or --

18 MR. BARTELS: I'm here, Patrick Bartels. I have
19 the background of the skyline of Charlotte, North Carolina -
20 -

21 THE COURT: Oh, I see --

22 MR. BARTELS: -- behind me.

23 THE COURT: Okay. Would you raise your right
24 hand, please? Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth, so help you God?

1 MR. BARTELS: Yes.

2 THE COURT: Okay.

3 MR. BARTELS: I do.

4 THE COURT: So, Mr. Bartels, you submitted a
5 declaration dated August 9th, 2022 in support of the joint
6 motion of the Debtors and the Committee for approval of the
7 settlement and related relief, knowing that it would be your
8 direct testimony for this motion. Sitting here today, on
9 the 31st of August, is there anything in the declaration
10 that you'd wish to change?

11 MR. BARTELS: No, sir.

12 THE COURT: Okay. As Mr. Schrock stated, there
13 were no objections to this motion; although, there were a
14 couple of reservations of rights. So, I don't believe
15 anyone would be cross examining you and based on my review
16 of the declaration, I don't have any questions of you, so --

17 MR. BARTELS: Thank you, Your Honor.

18 THE COURT: You could consider your testimony
19 complete. And then --

20 MR. BARTELS: Thank you.

21 THE COURT: -- as Mr. Schrock said, I also have a
22 declaration of Brian Griffith. I see him there as well on
23 the screen. Would you raise your right hand, please, Mr.
24 Griffith? Do you swear or affirm to tell the truth, the
25 whole truth, and nothing but the truth, so help you God?

1 MR. GRIFFITH: I do.

2 THE COURT: Okay. And like Mr. Bartels, Mr.
3 Griffith you submitted a declaration in support of the first
4 motion on the agenda, the settlement motion, dated August
5 9th, 2022, knowing that it would -- it was intended to be
6 your direct testimony in connection with the motion. And
7 sitting here today, on August 31, is there anything in it
8 that you wish to change?

9 MR. GRIFFITH: No, Your Honor.

10 THE COURT: Okay. I may have questions for you
11 later in the hearing that are unrelated to the motion, if
12 the Debtors' counsel can't answer them, about the Debtors'
13 cash position and reserves and the like, but I don't have
14 any questions on the declaration, and again, the motion is
15 unopposed, so I don't believe anyone has any desire or
16 standing to cross examine you. So, your testimony is
17 complete.

18 MR. GRIFFITH: Thank you, Your Honor.

19 THE COURT: Okay, thank you.

20 MR. SCHROCK: Thanks, Your Honor. I'd also like
21 to note for the record that we filed a revised form of order
22 yesterday as well and the one today that I referenced that
23 incorporates the settlement that I referred to previously
24 with Cyrus and the PBGC and also resolves some concerns
25 articulated by various administrative creditors, the

1 reservation of rights about potential delays in the
2 occurrence of the effective date.

3 As a result of that settlement, which I can
4 outline and which is quite simple, there are no impediments
5 to the plan effective date occurring if the Court approves
6 the settlement today. Settlement with PBGC and Cyrus, the
7 remaining holder of 507(b) claims other than Debtors after
8 implementation of the settlement gets, you know, to each,
9 \$10 million from the liquidating trust on the plan effective
10 date.

11 The appeal pending in the Second Circuit will
12 continue. Following the decision, PBGC and Cyrus will
13 engage in good faith negotiations to determine whether
14 settlement can be reached to avoid any further litigation
15 and in the interim the liquidating trust will not make
16 distributions beyond the initial \$10 million to each party -
17 - to either party. In addition, the Debtors agree to
18 release any claims it may have against Cyrus other than
19 those asserted in connection with the 507(b) and 506(c)
20 litigations.

21 Secured, administrative, priority, and believe
22 general unsecured claims are benefitted and not hurt by the
23 settlement. As I said and Mr. Dizengoff will go into the
24 additional details regarding the settlement for the joint
25 asserted causes of action, the other party with standing and

1 the other co-movant on this motion. The global settlement
2 also resolves longstanding disputes between the Debtors and
3 Transform, bringing cash back to the Debtors' estate and
4 avoiding, we believe, further, you know, costly years of
5 litigation.

6 And the second item on the agenda is related to
7 one of those disputes. We'll go into that at a later point,
8 but at this point, Judge, unless you have any questions for
9 me, I'll cede the podium over to Mr. Dizengoff.

10 THE COURT: Well, I don't know if Mr. Dizengoff
11 was planning to address this or not, but I want to focus on
12 the first matter that you just discussed, which is the
13 proposed revision to the order on this motion that provides
14 for an interim distribution to the PBGC, on account of its
15 priority claim, its 507 claim, and separately, as part of
16 the settlement with Cyrus, provides for a distribution to
17 Cyrus of \$10 million.

18 I look at those two matters somewhat differently.
19 As far as the PBGC is concerned, my recollection -- and this
20 is also stated in the underlying motion -- is that PBGC as
21 part of the PBG settlement, earlier in the case, before the
22 confirmation --

23 MR. SCHROCK: Right.

24 THE COURT: -- has a priority claim to the first
25 \$97.5 million of proceeds recovered by the liquidating trust

1 which is, in fact, the interests of the liquidating trust
2 have been represented pre-effective date by the joint
3 committee of the representatives of the Creditors Committee
4 and the Debtors, after payment of all admin expense claims,
5 priority non-tax claims, priority tax claims, other 507(b)
6 priority claims, and secured claims.

7 So PBGC's interest is behind that group and I want
8 to explore in some more depth, given the payment proposed in
9 the order to PBGC, whether -- not whether -- what is the
10 basis for the Debtors' belief that those more senior
11 creditors would not be left high and dry or bereft of their
12 entitlement to payment under the plan, based on that \$10
13 million payment. And to that extent, the settlement
14 proposed with Cyrus raises the same issue, so there's, in
15 aggregate what's being proposed in the amended order is a
16 \$20 million effective date payment.

17 Currently, the Cyrus claim to that is disallowed,
18 and so appealed to the Second Circuit, and I understand the
19 logic behind the proposed settlement, but I'm just focusing
20 on the -- right now, the cash position, both before and
21 after that payment, in light of reasonable projections on
22 payment of senior claims.

23 And the Debtors have been periodically updating
24 the Court and the parties on the status of their liquidation
25 of secured, administrative, and priority claims, so I have

1 some background on that, but the last update was several
2 months ago, and I just want to have you walk through for me
3 why those payments don't jeopardize the effective date
4 occurring under the plan, which contemplates payment of
5 those senior claims for the plan to go effective, because
6 clearly one of the underlying premises of the motion is to
7 enable the effective date to go -- to occur, and the payment
8 of those senior claims.

9 So, I don't know who wants to address that, but I
10 would like to hear that at this point.

11 MR. SCHROCK: Your Honor, just a couple of quick
12 comments. I think that we can have Brian Griffiths be able
13 to address some of the Court's concerns around that, but in
14 sum and substance, this -- the \$20 million of payment are
15 designed to be made, you know, after effectively, you know,
16 consistent with the PBGC settlement, you know, immediately
17 upon the effective date but after payment of the secured
18 priority and administrative claims are made and there's --
19 if there's a disputed claim, we're going to reserve for
20 those more senior claims, but we can walk you through and
21 we'll just need to take a couple minutes here in the
22 background just to go over Mr. Griffith, the basis for the
23 company's -- for the Debtors' cash position and why the
24 Debtors have sufficient cash even after payment of the
25 senior claims to make the payments under the terms of the

1 settlement.

2 THE COURT: Okay. Let me -- I mean, I got this
3 proposed order this morning, so I just want to make sure --

4 MR. SCHROCK: Yeah.

5 THE COURT: -- I understand the point that you
6 just made that --

7 MR. SCHROCK: It's going to be --

8 THE COURT: -- the \$10 million payments are to be
9 made --

10 MR. SCHROCK: On the effective date.

11 THE COURT: Yes. Paragraph 14(b) does say on the
12 effective date. You're right.

13 MR. SCHROCK: Right.

14 THE COURT: And there's an additional \$10 million
15 reserve on the effective date --

16 MR. SCHROCK: Correct.

17 THE COURT: -- for Cyrus and PBGC, pending outcome
18 of the appeal or settlement of it. But, so you correct me
19 on that point, but I'm still -- I still want to make -- so
20 that assumes the effective date will have occurred, which
21 means that --

22 MR. SCHROCK: Correct.

23 THE COURT: -- administrative expenses and secured
24 claims will either be paid on the effective date, or if
25 they're objected to, appropriately reserved for, so I guess

1 that's the focus for what Mr. Griffith should be walking me
2 through.

3 MR. SCHROCK: Yes, Your Honor, and we'll be sure
4 to cover that, because we did come up with that number in
5 the settlement based upon what the Debtors' projections are
6 for, you know, with sufficient cushion for excess cash that
7 we could safely say that after payment of all those expenses
8 to go effective and reserving for anything that's disputed,
9 that we would have, you know, that \$30 million we would make
10 those payments and that that would clear the way for the
11 effective date.

12 THE COURT: Okay. So --

13 MR. FAIL: Your Honor, if --

14 THE COURT: Go ahead.

15 MR. FAIL: Good morning. It's Garrett Fail. I
16 think Mr. Griffith can confirm my statements that -- the
17 following statements that the \$180 million in settlement
18 proceeds that are coming in, together with cash on hand at
19 the proposed effective date, will be sufficient to both
20 satisfy allowed administrative expense claims including
21 those that are -- have received partial payment pursuant to
22 the administrative consent program and so there's roughly
23 \$27.5 million owed on account of that constituents that have
24 received part, plus those that have not received, you know,
25 the opt outs. That's another \$6.4 million of allowed

1 claims, so clearly, 180 minus 33, there's sufficient to pay
2 the allowed administrative.

3 There's also sufficient cash to satisfy a reserve
4 for 100 percent of the asserted amount of any disputed
5 administrative claims. There will be sufficient amount to
6 reserve for the asserted amount of the secured claim that's
7 outstanding. There will be --

8 THE COURT: And that's the --

9 MR. FAIL: -- sufficient --

10 THE COURT: That's the Carl Ireland claim?

11 MR. FAIL: The relator, Your Honor, at \$18.2
12 million.

13 THE COURT: Right. Okay.

14 MR. FAIL: There's sufficient amounts to pay the
15 amounts owed under the retiree settlement of 1.7. There's
16 sufficient amounts to pay priority severance that's ready to
17 be paid on the effective date of 3.6. There's available
18 amounts to pay taxes that are agreed upon of another 14.
19 And there's a sufficient amount in addition to all of that
20 to reserve for disputed priority and disputed tax
21 obligations.

22 And then there's further -- and very critically
23 and importantly -- a sufficient amount to reserve pursuant
24 to the plan and the liquidating trust agreement for the
25 future winddown activities of the liquidating trust. And

1 then, Your Honor, after that, there is \$10 million available
2 to go to PBGC, \$10 million to go to Cyrus, \$10 million to
3 put aside so that it is not used for winddown activities,
4 and then additional amounts expected to be available, a
5 small amount -- you know, hopefully, it grows -- but
6 additional cash after that and remaining assets to be
7 monetized after that.

8 But Your Honor, the intent of this settlement was
9 to allow the plan to go effective, which in our mind, means
10 satisfying administrative claims, secured priority, and
11 reserving, as the plan requires, in full until it's
12 resolved, the remaining disputed claims, and after that,
13 Cyrus and PBGC will split the amount after reserves for
14 amounts required for the winddown activities and the \$10
15 million -- the three \$10 million chunks contemplate that.

16 And I think -- I would hope that in summary, Mr.
17 Griffith can confirm that information for you.

18 THE COURT: Before I ask Mr. Griffith that
19 question, in covering the administrative expenses, both
20 those that have been allowed and a full reserve for the
21 others that are still open, that haven't been disallowed,
22 have you counted the amounts that are currently being sought
23 in the final fee applications?

24 MR. FAIL: Thank you, Your Honor. Yes. Included
25 in my calculation of what would remain to be distributed by

1 the liquidating trust and the cash on hand balances, include
2 payments in full of amounts accrued and incurred prior to
3 that date.

4 So there are sufficient funds to pay the
5 administrative claims that have been filed plus other
6 administrative expenses incurred throughout the cases in the
7 ordinary course, including the professional fees that are
8 being sought today and then still have money to be
9 distributed to the PBGC and now Cyrus, and that was part of
10 the success of the settlement, Your Honor, and in
11 particular, getting the quantum of funds that we did in
12 order to satisfy all expenses and provide a material return
13 to the beneficiaries of the liquidating trust.

14 THE COURT: Okay. So, Mr. Griffith, you heard Mr.
15 Fail's summary being permitted with the Debtors' current
16 cash and claim position. Was it accurate?

17 MR. GRIFFITH: It was accurate, Your Honor, yes.

18 THE COURT: Okay. Does anyone want to question
19 either -- question Mr. Griffith or argue with Mr. Fail about
20 that summary?

21 MS. MORABITO: Your Honor, Erika Morabito of Quinn
22 Emanuel on behalf of the admin expense claim rep. Can you
23 hear me --

24 THE COURT: Yes, yes.

25 MS. MORABITO: -- see me okay?

1 THE COURT: Good morning, yes.

2 MS. MORABITO: I don't want to argue with Mr. Fail
3 or cross examine Mr. Griffith, but I do -- and I actually
4 did not intend on making our statements until after Akin
5 finished with their description and summary of the
6 settlement, but you raised the very points that we were
7 inundated with questions from our admins and so there are a
8 couple other things, I think, that are important in the plan
9 that got the admins comfortable with the new language in the
10 proposed order that I think adds additional protection to
11 those admin claimants.

12 So because I do have several administrative
13 creditors listening in today, we reached out as many as we
14 could and walked them through that and we did indicate that
15 we would walk through it orally with the Court to avoid a
16 bunch of reservations of rights being filed, with Your
17 Honor, indulgence, it should take less than three minutes,
18 if I can just point out a couple other provisions in the
19 plan that I think are important as it relates to the
20 agreements that were made as part of the original plan and
21 confirmation order so that they understand with certainty
22 that this settlement agreement is not seeking to modify
23 those previous rights they had agreed to under the plan.

24 THE COURT: Right. No, that would be helpful.
25 Thank you.

1 MS. MORABITO: Okay. So first, Your Honor, with
2 respect to the opt-ins, non-opt-outs, and just by way of
3 reminder these were those claimants who agreed by supporting
4 the plan, they would have no more than 75 or 80 percent of
5 the allowed claim amount being paid.

6 THE COURT: Right.

7 MS. MORABITO: And there's a provision --

8 THE COURT: The non-opt-outs are at 80 and the
9 opt-ins are at 75.

10 MS. MORABITO: Correct.

11 THE COURT: Right.

12 MS. MORABITO: That's exactly right. And there's
13 a provision in the plan, in the plan confirmation order,
14 which is 52(a)(4), and the plan provides that additional
15 distributions shall be made to holders of settled admin
16 expense claims -- which is a defined term -- at all times
17 when cash on hand in \$10 million.

18 And this is important, because what that means is
19 when these settlement proceeds come in, even if the
20 effective date has not yet occurred, the Debtors are
21 obligated and shall make distributions to the remaining -- I
22 heard Mr. Fail say -- was \$27.5 million of those opt-in,
23 non-opt-outs. So, there's nothing in the settlement
24 agreement that's going to modify what was a heavily
25 negotiated condition for those people to support the plan.

1 That's number one.

2 Number two, the questions came from the opt-outs,
3 which was, what does this mean for the opt-outs, if in fact
4 now we were always required to be paid on the effective
5 date, if there's going to be a distribution being made, to
6 your point, Your Honor, to PBGC and Cyrus. Are we still
7 going to get paid on the effective date in advance of those
8 payments going out?

9 The answer is, obviously the opt-outs would like
10 to now become opt-ins so they can be paid pre-effective
11 date, but that's not happening because that would be a
12 material modification of the plan.

13 THE COURT: There was a time when --

14 MS. MORABITO: But it is --

15 THE COURT: -- you could do that, which has
16 passed.

17 MS. MORABITO: Correct.

18 THE COURT: Right.

19 MS. MORABITO: And I think Mr. Fail stated it
20 correctly which is, it is true that the opt-outs, which I
21 believe are \$6.4 million is what Mr. Fail stated a few
22 minutes ago, those claims will, in fact, be paid on the
23 effective date and they will be paid prior to the
24 distributions being made to Cyrus and PBGC. And with that
25 clarification, I certainly reviewed the order that was

1 submitted and had changes, and I think Your Honor raised a
2 good point with respect to 14(c), which is the distribution
3 language, and maybe we could add in Paragraph C where it
4 states that for the sole benefit of Cyrus and/or the PBGC,
5 pending outcome or settlement of Cyrus' Section 507(b)
6 appeal, if we insert in there, pursuant to this order and
7 the plan and confirmation order.

8 I think by adding that it's also going to be
9 pursuant to the order and the plan and confirmation order,
10 there's no question then that the payments to PBGC and Cyrus
11 -- although they're current on the effective date -- they
12 would only occur after those other admins that are -- admins
13 and secured priority claims are also supposed to be paid on
14 the effective date.

15 I think that was always the intent, but I think
16 Your Honor, you know, pointed us all out to something that
17 maybe we can tighten up a little bit.

18 THE COURT: I have no problem with that.

19 MS. MORABITO: Okay. With that, Your Honor, I
20 think having both of those language -- that language
21 included in the plan, as well as language in the settlement
22 agreement in Section 3(a) as well as the proposed settlement
23 order Paragraph 3, which is very clear that distributions
24 must be made in accordance with terms of the plan and the
25 settlement agreement and the confirmation order, I think

1 that's boots and suspenders, at least for our constituents,
2 to make sure that those are paid with the settlement
3 proceeds that are coming in and that they can be paid
4 either pre-effective if they're opt-ins or non-opt-outs, and
5 then obviously with respect to the opt-outs and others, they
6 can be paid pursuant to the plan on that priority scheme set
7 out on the effective date.

8 THE COURT: Okay. Thank you.

9 MS. MORABITO: Thanks, Your Honor.

10 THE COURT: Okay.

11 MR. FOX: Your Honor, Edward Fox. If I may?

12 THE COURT: Sure.

13 MR. FOX: Among the amounts that were indicated by
14 Mr. Fail, there's in addition what the proposed order calls
15 the second lien note settlement. There's a payment there of
16 \$4.1 million. I just want to make sure that that's
17 included, and given the language that was added to the
18 proposed order this morning, I just want to clarify that
19 there's --

20 MR. SCHROCK: We can so confirm, Your Honor, that
21 Mr. Fox's settlement is accounted for as part of the funds
22 flow for the effective date.

23 THE COURT: Okay. And that is part of this
24 settlement, so I'm assuming that that's --

25 MR. SCHROCK: Yes.

1 THE COURT: -- in there.

2 MR. SCHROCK: Yes.

3 THE COURT: All right.

4 MR. LEBLANC: Your Honor, it's Andrew Leblanc of
5 Milbank on behalf of Cyrus.

6 THE COURT: Yes.

7 MR. LEBLANC: Hi, Your Honor. I'm joined by my
8 colleagues Eric Reimer and Tom Kreller who are also on the
9 line. I don't -- I think Mr. Schrock has faithfully
10 described the terms of the settlement. I'm happy to answer
11 any questions Your Honor has. We had -- the questions Your
12 Honor asked about the availability of the \$30 million, the
13 10, 10 and 10, was a focus of ours as well when the concept
14 was raised with us to try to resolve our reservation of
15 rights.

16 We're pleased to have come to a resolution of this
17 on the terms that are reflected there. Critically, you
18 know, I think a couple of points that I would add, Your
19 Honor, that incremental \$10 million escrow that Your Honor
20 noted in Section 14, that was critical to our resolution
21 because that money will be available, depending on the
22 outcome of the Second Circuit decision.

23 And in addition, there's other language added to
24 make clear that the priorities, assuming our claim is
25 allowed as an administrative claim, that it would retain its

1 priority over the PBGC's claim, which is a post-effective
2 date claim, we're -- that should be clear.

3 And we've also made some changes that may not be
4 obvious to the Court, but are designed -- the settlement as
5 structured, because the Debtor is retaining its 506(c)
6 arguments with respect to if we have an allowed 507(b)
7 claim, the plan as proposed suggests that we are not the
8 beneficiaries of fiduciary duties, and so we've made some
9 clarifying comments and Section 14 modifies that to make
10 clear that the litigation trust -- the litigation trustee
11 owed fiduciary duties to Cyrus while it continues to be a
12 potential beneficiary of the trust, while those appeals are
13 pending. I just wanted to make --

14 THE COURT: Those duties are in the form of Cyrus
15 for that purpose, being a trust beneficiary.

16 MR. LEBLANC: Correct. That's exactly right, Your
17 Honor. The language of the trust agreement itself suggests
18 that it wouldn't -- the Trustee would not owe us duties as
19 long as a claim was retained against us, and we didn't want
20 that to be misconstrued, and so we've clarified that. It
21 doesn't change anything. As long as we're a beneficiary,
22 we're owed duties and we have the reporting rights that are
23 contained in the agreement.

24 THE COURT: Okay.

25 MR. LEBLANC: So, happy to answer any questions

1 Your Honor has, but assuming this is approved, Your Honor,
2 it would resolve our reservation of rights that we filed at
3 Docket 10596.

4 THE COURT: Okay.

5 MR. LEBLANC: Thank you.

6 THE COURT: All right. So as far as -- I mean,
7 this was the relief that the relator requested, but the cash
8 will be set aside in the \$18 million and change amount that
9 was in Mr. Ireland's reservation and that will be the amount
10 under the order, I'm assuming, the prior order, dealing with
11 his adequate protection rights.

12 MR. SCHROCK: It's the amount of the claim, Your
13 Honor --

14 THE COURT: Right.

15 MR. SCHROCK: So pursuant to the plan --

16 THE COURT: Right, but he's -- that's his adequate
17 protection is that there's --

18 MR. SCHROCK: Agree, Your Honor. Yes, Your Honor.

19 THE COURT: And I'm assuming --

20 MR. HALPERIN: Your Honor --

21 THE COURT: -- fairly promptly distributed.
22 There's no reason that I'm aware of to keep it hanging out
23 there.

24 MR. SCHROCK: The claim hasn't been allowed yet,
25 Your Honor, but you know, as soon as it is allowed, the

1 distributions would be made.

2 THE COURT: Right. Okay.

3 MR. HALPERIN: Your Honor, it's Alan Halperin
4 (indiscernible).

5 THE COURT: Yes.

6 MR. HALPERIN: Alan Halperin on behalf of relator
7 Carl Ireland. I would just start by saying it really is
8 just a reservation of rights. We're delighted at the
9 settlement. It relieves a lot of anxiety and a lot of
10 concern about the liquidity and ability to get to an end
11 game. I think everything I've heard works. The only thing
12 I just want to be clear about -- need to be precise and
13 clear -- the reserves that are being made where reserve was
14 use for Relator Carl Ireland. A good look at the Cyrus
15 language, think it was, we can see, those funds are
16 restricted, correct, meaning they won't sit there until and
17 unless claim is allowed or paid.

18 THE COURT: The 18 --

19 MR. HALPERIN: -- otherwise.

20 THE COURT: The \$18 million and change that is
21 reserved on the Ireland claim.

22 MR. SCHROCK: In the disputed claims reserve.
23 Yes, Your Honor.

24 THE COURT: Okay.

25 MR. HALPERIN: Yes.

1 THE COURT: All right. And -- okay. So, I had
2 said earlier that some of the issues related to the two
3 additions to the order, one involving PBGC and one involving
4 Cyrus are related and we've just been going through those.
5 The other issue I wanted to raise was this. Unlike the PBGC
6 resolution, which doesn't alter the estate's rights vis-à-
7 vis PBGC's claim, because that claim was settled, the Cyrus
8 resolution provides for an actual payment on Cyrus' claim
9 under 507(b), which, again, currently is disallowed.

10 So, my question there is really one going to
11 notice. There has been in place in these cases for a long
12 time procedures regarding settlements and the amount of
13 notice that needs to be provided. Not having seen this
14 agreement until this morning, I've not gone through them all
15 and there may be, again, a modification of that in the plan,
16 but I -- there was really no notice of this settlement until
17 -- well, there really -- it was filed this morning. So,
18 what is the basis for proceeding with it today as opposed
19 to, under the provisions for notice of settlements that, I
20 think are in effect in the case?

21 MR. FAIL: Your Honor, Garret Fail from Weil for
22 the Debtors. Any notice provisions can be shortened by Your
23 Honor. We believe that here a resolution today is in the
24 best interest is in the best interests of all parties and
25 that the likely, you know, next beneficiary of the funds

1 other than Cyrus is PBGC up to \$97.5 million --

2 THE COURT: Right.

3 MR. FAIL: -- and that distributions, if any, to
4 the general unsecureds are, you know, not likely at this
5 moment and if, you know, at some later date -- so the fact
6 that this settlement benefits every other creditor waiting
7 to be paid and has the support of the Creditors Committee,
8 the administrative claims rep, and parties that have been
9 actively involved in the cases, we thought justifies
10 shortening notice and facilitating the effective date which
11 we know that many parties have been waiting for.

12 THE COURT: Well, what basket in the settlement
13 procedures order does this fall under? I mean, it's a \$10
14 million settlement, so --

15 MR. FAIL: I don't know that we're relying, Your
16 Honor, on any of the prior orders as much as we are, you
17 know -- I don't recall if we -- if notice is possible with
18 just at the \$10 million threshold with the parties that are
19 consenting, which include the prepetition lenders, the
20 administrative claims representative, the UCC.

21 THE COURT: Well --

22 MR. FAIL: Right, so all of the parties that have
23 been consultation parties have supported this and have been
24 involved along the way.

25 THE COURT: Well, let me ask this question. When

1 were you contemplating making these payments? I mean --

2 MR. FAIL: Upon the effective date.

3 THE COURT: No, no, but when --

4 MR. FAIL: -- the plan, Your Honor.

5 THE COURT: -- do you think that's going to
6 happen? I mean, it would seem to me --

7 MR. SCHROCK: Within 30 to 60 days, Your Honor.

8 THE COURT: All right. So, I don't see why you
9 couldn't do a notice of -- you know, either follow the
10 procedure in the most current order or plan provision, or do
11 a notice of presentment --

12 MR. FAIL: -- Judge.

13 THE COURT: I think it's highly unlikely that
14 anyone would object or that such an objection would be
15 granted. I just think it's safer to do it that way,
16 including for Cyrus, because, you know, there's basically --
17 I appreciate that the key constituents that you just listed
18 have been part of the negotiation of this, you know, behind
19 the scenes for some time, but as far as, you know, notice
20 requirements, I just -- I'm uncomfortable that that's
21 enough.

22 MR. FAIL: Yes, Your Honor --

23 MR. LEBLANC: Your Honor, this is Andrew -- sorry.
24 Go ahead, Mr. Fail.

25 MR. FAIL: I think we're probably going to say the

1 same thing, Mr. Leblanc, that it's a chicken and egg. Cyrus
2 was unwilling to withdraw its reservation of rights and
3 allow the order to -- the settlement to be approved absent
4 this. It's a key component and therefore integral to the
5 approval of the settlement and then to allow the, you know,
6 mechanics to start going into effect to prevent anybody from
7 trying to stop it.

8 THE COURT: Well, so let me ask. I mean, if the
9 effective date wouldn't be occurring for 30 to 60 days, why
10 couldn't I address the settlement and say that it's
11 approved, conditioned on the approval of the -- Cyrus
12 signing them. I don't -- I mean, unless there's some
13 immediate step you have to take in the next 10 to 20 days,
14 that --

15 MR. LEBLANC: Your --

16 THE COURT: -- wouldn't otherwise be taking, I
17 don't see why I couldn't do that.

18 MR. LEBLANC: Your Honor, again Andrew Leblanc
19 with Milbank on behalf of Cyrus. I think there are two
20 issues. One is exactly what Mr. Fail said, which is we are
21 relying on this to withdraw our reservation or rights. Your
22 Honor, obviously, it's not an objection, and what -- the
23 reservation of rights makes clear that we would be -- we're
24 not opposed to the settlement. We're supportive of the
25 settlement, but we are opposed to what may happen with the

1 proceeds --

2 THE COURT: Okay.

3 MR. LEBLANC: -- to the extent that they're
4 distributed in a way that -- and so we, in the absence of
5 the settlement that we reached that's reflected in this, we
6 would be taking other steps including seeking a stay of
7 distributions and things along those lines. That's one
8 issue.

9 The second issue is, the Second Circuit -- we
10 argued this on September 24th of last year. The Second
11 Circuit could rule at any time and I think the reason that
12 people reached this agreement is because that issue is sub
13 judice and --

14 THE COURT: Well, I think you can --

15 MR. LEBLANC: -- I don't want that status quo to
16 change.

17 THE COURT: -- pretty well tell them today that
18 you have a resolution of it and they -- and you request them
19 to hold it off. And frankly, it's a settlement that's, the
20 Debtors have agreed to today, so -- and they're --

21 MR. LEBLANC: The only issue is --

22 THE COURT: Let me finish. And there are reasons
23 why they're agreeing to it today, which is that this
24 reservation has not turned into an objection, and frankly,
25 that you wouldn't be seeking a stay. So again, I just -- I

1 don't understand how literally half an hour's notice is
2 enough notice of a \$10 million settlement. The settlement
3 may well make sense. In fact, I think it does make sense.
4 But, you know, there is such a thing as notice and due
5 process, so that's what I'm going to do on this, which is I
6 will consider the settlement on its merits.

7 I appreciate that the Cyrus settlement is an
8 integral part to the distribution aspect under which I'm
9 considering the settlement and the settlement won't,
10 therefore, the -- an order approving the settlement, would
11 not be effective until the Cyrus settlement is effective.

12 MR. LEBLANC: Your Honor, again, Andrew Leblanc.
13 Two issues, just so the Court is aware. It was not --
14 because our appeal remained outstanding and we are hoping to
15 get a decision, we weren't -- we informed the Second Circuit
16 of the existence of a settlement and I know ESL had informed
17 the Second Circuit through a 28(j) letter that they had
18 resolved their appeal, but we weren't otherwise intending to
19 inform the Second Circuit because we don't want to disrupt
20 their decision making.

21 We can obviously do that if we have to, to make
22 them aware that we have a resolution, that we wouldn't want
23 them to issue a decision for some period of time, but that
24 once the settlement that we've struck is approved, we do
25 need -- we do want them to issue a decision. We're trying

1 to avoid that outcome.

2 THE COURT: Okay.

3 MR. LEBLANC: The second issue, Your Honor --

4 THE COURT: I think people become judges on the
5 Second Circuit, so they understand those issues.

6 MR. LEBLANC: Understood, Your Honor. The second
7 issue, and again, this is not directly my issue nor is the
8 notice issue directly our issue, but I -- the one question I
9 have is if the settlement -- I believe that the payment by
10 the insurers is triggered off of when the settlement is
11 effective. And that's the one thing that I'm sure no one
12 wants to delay that issue.

13 MR. SCHROCK: I have a potential solution for Mr.
14 Leblanc, if I could just --

15 THE COURT: Okay.

16 MR. SCHROCK: -- jump in here, Your Honor. So, I
17 think what we could do is have the settlement order entered.
18 You know, we have the settlement with Cyrus. The Debtors
19 would stipulate that we're not going to make plan
20 distributions that would be made on the effective date prior
21 to, you know, the lapsing of the time --

22 THE COURT: Right.

23 MR. SCHROCK: -- for the Court's order --

24 THE COURT: That actually makes --

25 MR. SCHROCK: And that way --

1 THE COURT: That makes sense.

2 MR. SCHROCK: -- they're protected.

3 THE COURT: That's really -- that's what Cyrus'
4 reservations is about, is the distributions of the --

5 MR. SCHROCK: Right. And we -- that way, Mr.
6 Leblanc wouldn't feel the need to go seek a stay. We'd
7 certainly stipulate that, you know, we're not going to be
8 making those effective date distributions prior to the 21
9 days. And if for some reason there was a problem with Court
10 approval of the settlement, you know, we would certainly
11 even stipulate, we're not going to make those distributions
12 before the Court could have a hearing on, you know,
13 approval.

14 THE COURT: On the objection.

15 MR. SCHROCK: Correct.

16 THE COURT: It may not -- it may be less than 21
17 days. Again, I've not gone through and tracked --

18 MR. SCHROCK: Right.

19 THE COURT: -- the orders that are in effect
20 governing settlements. It may be that this one doesn't
21 require -- you know, it's a whole menu depending on the size
22 of the settlement and who signed off on it and the like.
23 So, it may be less than the 21 days.

24 MR. FAIL: Ten business days, Judge, I think under
25 ECF 3014.

1 THE COURT: Okay.

2 MR. SCHROCK: We could certainly add that
3 stipulation and, you know, for Mr. Leblanc and his client
4 and I think that way, we get the funds in right away, allow
5 this order to go effective, and certainly, you know, cover
6 that all.

7 THE COURT: Okay. And again, as far as the notice
8 is concerned, it would be done by notice of presentment. I
9 actually don't think there will be objections. I agree with
10 what people have said to me and I understand the basis for
11 the settlement. I don't have reservations about it. I'm
12 really saying this for due process purposes and part of due
13 process is someone may have a light bulb go off and say, you
14 know --

15 MR. SCHROCK: Right.

16 THE COURT: -- everyone on the screen who did the
17 negotiations missed the following point, but I certainly
18 don't see it and of course, I spent a lot of time on the
19 506(c), 507(b) issues, as did the District Court, and I
20 think certainly as far as I was concerned, and I -- having
21 read the District Court's opinion, I think the district
22 judge would probably think the same thing, to resolve the
23 issue once and for all, given the amount of the claims, even
24 though the merits, we both decided were in favor of the
25 Debtors, is warranted by a settlement like this.

1 So, I'm really doing it so that there wouldn't be
2 any question of it not standing up if there weren't
3 sufficient notice of it. So, I think Mr. Schrock's proposal
4 should be incorporated in the order. So --

5 MR. SCHROCK: We're happy to do so.

6 THE COURT: So, I wanted to address those two
7 points first since they were brand new this morning;
8 although, the first one that we addressed had been looming
9 over the settlement because of the reservations of rights
10 for some time now, i.e., the confidence one would have that
11 it does, in fact, enable an effective date to occur.

12 So having said that, I'm happy to hear Mr.
13 Dizengoff.

14 MR. SCHROCK: Cede the podium.

15 MR. DIZENGOFF: Okay, thank you, Your Honor. Good
16 morning. Ira Dizengoff, Akin, Gump, Strauss, Hauer, and
17 Feld for the record. On behalf of both the litigation
18 designees and the Official Creditors Committee.

19 Your Honor, we extent -- gave you an extensive
20 motion in connection with approval of the settlement, so I
21 don't want to belabor that and go over it and repeat what is
22 abundantly clear from the paper record. And in light of Mr.
23 Schrock's brief comments about the settlement and the
24 merits, I don't want to repeat that, either. And the
25 settlement itself is supplemented by what he said today with

1 the Cyrus and the PBGC settlements as well.

2 The settlements themselves underlying the
3 settlement motion, as you know, Your Honor, bring an
4 immediate influx of about \$180 million of cash into these
5 estates. That is a monumental outcome here and very
6 important to get to the effective date, and it will provide
7 as Mr. Griffith said in his testimony and as clarified by
8 you in the follow-up questions, enough funds to pay
9 administrative creditors, secured claimants, and take this
10 plan to be effective and will provide meaningful recovery as
11 well to the PBGC on account of their priority unsecured
12 claim.

13 So that, Your Honor, is really a herculean outcome
14 on these estates which started in a very uncertain time and
15 a very uncertain outcome in what people have referred to as
16 the retail apocalypse. So, Your Honor, the results here are
17 the culmination of literally years of work by numerous
18 parties in both the main Chapter 11 cases and the adversary
19 proceeding.

20 And I would say this, from my own personal
21 experience and obviously you as well and Mr. Schrock and the
22 Weil team and the Akin team as well, there were lots of ups
23 and downs during the course of this case and it was not
24 without dispute. But through the good offices of our
25 mediators -- Judge Chapman, Judge Peck, and Mr. Melnick --

1 we were able to reach consensus on very complicated issues
2 and bring enough value to these estates to get to the
3 effective date.

4 And it's only through people's hard work and
5 constructive dialog in connection that we can actually get
6 there. So, I did want to pause for one second and say it
7 was actually a pleasure working with the Weil Gotshal team.
8 Mr. Schrock and Mr. Fail did a fantastic job keeping the
9 Creditors Committee informed, keeping -- even when we had a
10 dispute about issues, keeping us very professional and
11 getting to a consensual resolution on things. And also want
12 to compliment my partner Sara Brauner who did a terrific job
13 and it's obviously -- sometimes not seen to you, Judge,
14 about the hard work that goes in these outcomes and these
15 settlements, so I want to compliment both Mr. Fail and Ms.
16 Brauner on that outcome. It's really a terrific thing.

17 So, Your Honor, three years ago in October of
18 2019, we got to consensual resolution on the plan of
19 reorganization. We set the groundwork for getting to
20 monetizing effectively the insider actions and we have now
21 done that, which I think is only 30 or 60 days away. And
22 that could not have happened without an enormous analysis, a
23 lot of hard work, and deep dive into various causes of
24 action which you know very well and I don't have to dictate
25 and tell you about what the depth and understanding of the

1 complicated issues that are here.

2 You have literally read hundreds of pages in
3 connection with the motion to dismiss and it is very, very
4 complicated issues. As you know, Your Honor, there were
5 millions of documents that were produced in discovery, which
6 we have poured through. As Your Honor is well aware, there
7 were long and complicated oral arguments in connection with
8 this, and the issues are bespoke. There are lots of issues
9 of first impression, about statute of limitations, and the
10 like and various defenses to the various causes of action.

11 In a word, Your Honor, this is complex and there's
12 no other way to say other than this just has an uncertain
13 outcome. The designees, as you saw in the declaration from
14 Mr. Bartels, have their own views about the merits and
15 demerits of litigation. They are well informed,
16 sophisticated professionals and in the end of the day, Your
17 Honor, in light of the circumstances about collectability,
18 they looked at things with an appropriate lens.

19 Litigation, as you know, is expensive and
20 litigation also has uncertain outcomes. And while they've
21 been -- invested themselves and their time and their energy
22 into analyzing all these things and exercising their
23 fiduciary obligations, they've come to the conclusion,
24 correctly, that it is now time to get to the effective date,
25 for all involved. And there are lots of claimants that have

1 benefitted by this settlement that's before you.

2 So, the settlement agreement, Your Honor,
3 represent an important achievement and a good outcome for
4 the Debtors' estates and its creditors. One thing I just
5 want to highlight for you, Your Honor, is the settlement
6 itself resolves the insider actions in their entirety.
7 There is a public shareholder action aspect of this and
8 we're hoping that people, there's a little bit of time left
9 to sign onto that, but for the most part, that resolved it.
10 For people who are paying their share of the settlement,
11 public shareholder settlement portion, which is \$7.5
12 million, that's all detailed in the motion itself, so I
13 don't want to spell that out to you.

14 Your Honor, just to conclude my remarks and
15 comments on it, I would be remiss if I didn't take a moment
16 to just thank you, Your Honor, for the staggering commitment
17 to this case and your countless other matters. I don't mean
18 to start a parade of, you know, thank yous, thank yous, for
19 your --

20 THE COURT: No, please don't.

21 MR. DIZENGOFF: -- time and service, Your Honor.
22 I won't. but it's -- you know, it's an understatement to
23 say that you'll be missed, so I thank you for that and wish
24 you success and happiness in the future in the next days.
25 Your Honor, with that, unless you have questions for me,

1 Your Honor, and how the Committee and the designees have
2 evaluated this, we would ask that you, subject to the caveat
3 on the Cyrus aspect of it, enter 10622 on the ECF number.
4 That is the most -- that is the order approving the
5 settlement and I'll pause there for any questions that you
6 might have for me.

7 THE COURT: Okay. I don't think I have questions
8 on the settlement as they would relate to the factors that I
9 need to consider; merits, delayed cost, competency of the
10 parties negotiating, et cetera. I do have a couple of just
11 questions that I just would like some clarification on.

12 You mentioned that this would -- this settlement
13 would resolve the claims in one of the two adversary
14 proceedings. It wouldn't resolve, at least as of now, all
15 of the claims for those who are not settling in the public
16 shareholder proceeding. And I had a couple of questions
17 related to that. I received the email that referenced the
18 filing of the updated list of settling parties, the list of
19 participating public shareholder defendants, and I have a
20 question about that.

21 There was a -- one of the additional public
22 shareholder defendants was Goldman Sachs Profit Sharing
23 Master Trust. There's another public shareholder defendant
24 that I think was not participating earlier, Goldman Sachs
25 and Co., LLC, and I just don't know if that was a glitch and

1 maybe counsel at Morgan Lewis could answer this or are they
2 not participating while -- I'm assuming an affiliate,
3 Goldman Sachs Profit Sharing Master Trust is participating?

4 MR. DIZENGOFF: Your Honor, outside my bailiwick.

5 THE COURT: Okay.

6 MR. DIZENGOFF: But we asked the same question
7 yesterday, so I'm going to punt to either the Morgan Lewis
8 team or Kara Casteel who -- from ASK who's dealing with the
9 public shareholder litigation.

10 THE COURT: Okay. Why don't I hear from counsel
11 from Morgan Lewis.

12 MS. BOEY: Good morning, Your Honor. This is
13 Melissa Boey from Morgan Lewis on behalf of the Sears Non-
14 Insider Defendant Group and that includes both Goldman Sachs
15 and the Goldman Sachs Master Trust. The Master Trust has
16 opted to participate in the settlement according to its
17 terms, but Goldman Sachs and Co. has not.

18 The way these funds are structured is that they
19 are not actually sort of affiliated with one another and
20 don't make -- the same decision makers are not -- sorry.
21 There are different decision makers for each of them and so
22 the participation of one does not, you know, cover the
23 release of the other and the Goldman Sachs defendant as well
24 as the other Goldman Sachs related defendants are not
25 participating in the settlement at this time.

1 THE COURT: Okay. All right. That clarifies
2 that. And related to the non-participating parties, I had a
3 question or two about the contribution bar provision in the
4 order. First, I just want to confirm -- I believe this is
5 the case -- that the motion with the proposed order which
6 hasn't changed, I think, since the motion was filed, as to
7 the contribution bar provisions was served on all of the
8 defendants in the two litigations. I think we've confirmed
9 that, but there are so many parties, I just want to have
10 someone on the plaintiffs' side -- or the movants' side --

11 MR. SCHROCK: It's a good question. Mr. Fail, do
12 you know the service? Because I don't remember who did the
13 service for us. But I think the answer is definitely yes,
14 but someone needs to confirm that.

15 MR. FAIL: Ms. Brauner, do you know who you got
16 the list from?

17 MS. BRAUNER: Good morning, Your Honor. Sara
18 Brauner, Akin Gump on behalf of the Committee and the
19 designees. The service list included all parties to the
20 litigation, meaning public shareholder action, original
21 action, and the main Chapter 11 cases.

22 THE COURT: Okay. All right. I'm asking that
23 because again, there is a contribution bar in the proposed
24 order noticed in the motion and there is some back and forth
25 in the caselaw in the Second Circuit in the lower courts as

1 to the types of contribution bar that a Court can approve
2 where there isn't notice compared to where there is notice
3 and here, there was -- I believe there was notice. I mean,
4 that was what we confirmed as well.

5 And on that basis, I believe the contribution bar
6 is appropriate. If there had not been notice, I think you
7 might've needed a formulation that it be -- that the
8 judgment credit be the greater of the settlement attributed
9 to common damages and the settling defendant's proportion
10 and share. The way it's listed or written now, it's just
11 the settling defendant's proportion and share. But given
12 the lack of objection and given the notice, I'm comfortable
13 with the way it's worded in the proposed order and in the
14 motion.

15 The last point I have is that -- is really a
16 procedural one and it, again, is related to the non-settling
17 parties. The non-settling parties have -- how much longer
18 do they have to join in, if they want to join in?

19 MR. ANKER: Your Honor, this is Philip Anker from
20 Wilmer, Cutler, Pickering, Hale and Dorr -- for Mr. Lampert
21 and the ESL defendants. I think as it is written, non-
22 settling public shareholder defendants have until the day
23 before Your Honor's entry of the order. So, if you were to
24 enter the order today, they technically are out of time.
25 I'm speaking only on behalf of my client. If Your Honor and

1 other parties were agreeable to extend that period, we
2 certainly would have no objection to doing so, but I think
3 as written, I'll enter the order tomorrow, it would be
4 until, you know, 11:59 tonight.

5 THE COURT: Okay. That's how I read it, too, but
6 it's really a practical issue for the, I think the
7 plaintiffs' side of the settlement as to whether they want
8 to build a cushion in there that I could put in the order or
9 not, and I'm just throwing that out there for them.
10 Secondly -- because I don't know if they've made a bit push
11 to do this and it's still pending or whether they've already
12 done that and they've gotten all the answers they expect to
13 get.

14 The other point is that I think from the
15 plaintiffs' side, you need to get a date from Judge Lane as
16 to, you know, a pretrial conference as to the remaining
17 people. As I read it, the only parties to -- who made
18 motions to dismiss have settled. There are a couple of
19 parties who filed a joinder which I think is of dubious
20 quality in a litigation like this and that might be an issue
21 that people want to discuss with Judge Lane.

22 But he would have the benefit of my work on the
23 motions to dismiss, but I'm not sure what the status of,
24 first, whether the plaintiffs want to build in any more time
25 for people to sign on than just the date of the entry of the

1 order and secondly, I think just as a practical matter, this
2 wouldn't go in the order, but you ought to think about
3 scheduling a conference with Judge Lane.

4 And I'm comfortable with it being the way it is,
5 i.e., defendants time to sign on ends when the order is
6 entered. Or if the plaintiffs are willing to give people an
7 extension and you put that in the order, I'm comfortable
8 with that, too. So, you don't have to tell me now. You
9 could think about it.

10 So, my last question on -- set of questions on
11 this, it's not related to the settlement. It's related to
12 the aspect of the motion that seeks a modification of the
13 plan. So, before I turn to that, does anyone else have
14 anything to say on the settlement itself?

15 MR. RAYNOR: Yes, Your Honor. This is Brian
16 Raynor on behalf of PBGC.

17 THE COURT: Yes.

18 MR. RAYNOR: We'd just like to voice our support
19 on behalf of the settlement. Of course, it's not perfect,
20 but there are a number of compromises made and we appreciate
21 the efforts of the estate professionals to broker the
22 settlement and the agreement that's set forth therein.

23 THE COURT: Okay, thank you. And of course, PBGC
24 is next in line here, so obviously, that's an important --

25 MR. RAYNOR: Yes, Your Honor.

1 THE COURT: An important fact for me. Okay. So,
2 hearing no one on the settlement aspect of the motion, which
3 is, you know, 95 percent of it, I did want to turn to the
4 aspect of the motion that seeks a modification of the plan.
5 It's clear the plan has not been substantially consummated.
6 It hasn't even gone effective at this point; although, it
7 has been confirmed.

8 So, there is an ability to grant the relief, but I
9 wanted to focus on the proposed amendments and they
10 basically go to two points: first, changes to the
11 liquidating trust agreement; and secondly, just timing of
12 objecting to claims. On the second point, the plan provides
13 in Paragraph 12.1 that any objections to claims, including
14 admin expense claims, secured claims, ESL 507(b) priority
15 claims, other 507(b) priority claims, priority tax claims,
16 priority non-tax claims, general unsecured claims, ESL
17 unsecured claims, shall be served and filed on or before the
18 later of 180 days after the effective date and B, on such
19 later date as ordered by the Bankruptcy Court for cause.

20 So, the amendment, the proposed modification to
21 the plan that changes that 180-day date to 365 or such later
22 date as ordered by the Bankruptcy Court, and then a later
23 date for general unsecured claims and ESL unsecured claims
24 to 550 days after the effective date or such later date, to
25 me, I'm not really sure that that even is a modification,

1 given that the plan itself recognizes that it could be a
2 later date as ordered by the Bankruptcy Court and that's
3 what you're asking me to do.

4 It does say for cause. I'm assuming the cause
5 here is that it is far from clear, in fact, probably
6 unlikely, that there will be meaningful distributions or
7 maybe even any distributions to general unsecured claims.
8 And the trust does not want to incur the expense in going
9 through a claim objection process unless that prospect
10 appears and it wouldn't appear for some time and that's why
11 the date is extended.

12 I'm not sure, though, why there's a later date for
13 the admin and priorities, if someone could explain that for
14 me so I --

15 MR. FAIL: Yes, Your Honor.

16 THE COURT: -- determine whether there is
17 sufficient cause to extend the date.

18 MR. FAIL: Thanks, Judge. It's Garrett Fail from
19 Weil for the Debtors. I think, unless there's a bust in the
20 document, we did bifurcate. We extended for a longer period
21 objections to general unsecureds --

22 THE COURT: Yes. Yes.

23 MR. FAIL: -- because that is -- and then we
24 extended the period from 180 to 365, you know, basically
25 instead of six months, so that in four-and-a-half months we

1 weren't back here. And the reason, Judge, is not to delay
2 objections. In fact, the vast majority are probably subject
3 to objections, but as Your Honor knows in mega cases,
4 sometimes summary objections are filed but reserve rights to
5 file others, so if there's a late claim objection pending,
6 we haven't objected to the substance. If the claim is
7 subject to a preference action, it may be disallowed. The
8 Debtors didn't invest to file all grounds for others, you
9 know, that could be a matter of law going first before
10 matter of fact.

11 And so you know, the Debtors have not waived any
12 rights to defend against claims. It's for the benefit of
13 all of the beneficiaries that have gotten the reduction of
14 the claims, you know, down billion dollars so far and so
15 it's simply a matter of convenience. If we didn't extend
16 now, in four-and-a-half months, we would be before Judge
17 Lane extending until all claims in the first category are
18 ultimately allowed or disallowed by final order.

19 It's just a matter of procedure and we're just
20 trying to save that money. We do not think it's a plan
21 modification. It's simply getting permission now rather
22 than later.

23 THE COURT: Okay. Okay. And then as far as the
24 other changes are concerned, they essentially boil down to
25 recognizing that the work of the --

1 MR. FAIL: Litigation designees.

2 THE COURT: The litigation review committee is
3 done and you don't need them anymore and the trust can be
4 operated by a trustee without that level of oversight and
5 expense. And that makes sense to me and does not appear to
6 me to be a material change that affects parties' rights in
7 any meaningful way, but I did want to raise a couple of
8 points.

9 The liquidating trust board served as a sort of an
10 oversight of the trustee and in some ways, that was -- is
11 taken over by the PBGC in the amendments, and that makes
12 sense, again, because the PBGC is entitled to the next \$97.5
13 million, subject to the appeal by Cyrus that we've been
14 discussing.

15 But for example, Section 4.8 of the liquidating
16 trust agreement just essentially deletes the reporting
17 obligation to the board and says that the trust -- sorry --
18 the liquidating trustee shall timely prepare, file, and
19 distribute statements, reports, and submissions as may be
20 necessary to cause the liquidating trust to be in compliance
21 in all material respects with applicable law.

22 I think I would be more comfortable with just a,
23 you know, a, at least semiannual report as to the status of
24 the trust.

25 MR. FAIL: Your Honor, I think that in the 9019

1 order, we agreed to a monthly reporting and consultation and
2 so we would love less, but we agreed to financial reporting.
3 Imagine it'll be rather static and slow, but we were happy
4 to provide updates.

5 THE COURT: I'm not sure I saw that. If that's in
6 here, that's great.

7 MR. LEBLANC: Your Honor, this is Andrew Leblanc
8 of Milbank. It is monthly reporting. That's reporting to
9 Cyrus and PBGC --

10 THE COURT: Oh, yeah. Right.

11 MR. LEBLANC: It's not necessarily --

12 THE COURT: I was thinking that something should
13 be filed just to --

14 MR. FAIL: Filed on the docket?

15 THE COURT: Yeah.

16 MR. SCHROCK: We could --

17 THE COURT: Not monthly --

18 MR. SCHROCK: -- do that.

19 THE COURT: Reporting -- and it's now Cyrus as
20 well as the PBGC. That was today's change, but I think I
21 would like something filed, at least on a semiannual basis.
22 The monthly reporting is fine, but you know, I just think
23 you could -- I'm assuming the reports are going to be
24 somewhat in writing. It shouldn't be onerous for the
25 trustee to turn those into one semiannual report.

1 MR. SCHROCK: We'll do that. We'll make the
2 change, Your Honor.

3 THE COURT: Okay.

4 MR. FAIL: Sure.

5 THE COURT: I think -- I'm working off the
6 blackline. I think Section 6.2 should be headed "Powers and
7 Duties of the Liquidating Trustee." And there's just a typo
8 at the end of the third line, the words "at the" should come
9 out at the end of the third line of 6.2(a).

10 MR. FAIL: Got it.

11 THE COURT: The PIP on Page 36 of the blackline,
12 there is a provision for the trust professionals to submit
13 reasonably detailed invoices on a monthly basis to the
14 liquidating trustee and PBGC, and I guess that's now Cyrus
15 as well. On Page 31, 6.4, it says "The liquidating trustee
16 shall receive compensation for its actual reasonable and
17 documented services to be paid out of liquidating trust
18 assets, up to a total amount not to exceed \$3 million."

19 There's -- I don't think there's any reporting
20 mechanism on that. It's just, there's a cap. But I don't
21 know if you want to -- to me, I would include the
22 liquidating trustee at least supporting that in 6.4 with,
23 you know, detailed invoices -- not on a monthly basis, but
24 just to show what is the basis for whatever that person or
25 their firm is going to charge.

1 MR. SCHROCK: Yeah, we'll add that provision, Your
2 Honor.

3 THE COURT: Okay. And then lastly, I think
4 there's a glitch, again, because of the removal of the
5 board, in the exculpation provision on Page 44 of the
6 blackline. It says, "Any action taken or admitted to be
7 taken with the express approval of the Bankruptcy Court,"
8 then just says, comma, "the liquidating trustee shall
9 conclusively be deemed not to constitute gross negligence."
10 But I mean, the liquidating trustee shouldn't be able to
11 approve its own gross negligence, so I think that needs to
12 be addressed.

13 I think it was worded before that -- the way it
14 was worded before was, "Any action taken or admitted to be
15 taken with the express approval of the Bankruptcy Court in
16 respect of such an action, the board shall be conclusively
17 deemed not to constitute gross negligence." So, I think
18 it's just, if the Court approves it, then that's enough.
19 And the way it's worded not, it doesn't work, so I think
20 that needs to be changed.

21 MR. SCHROCK: We'll fix that.

22 THE COURT: Okay. So let me turn back, then, to
23 the motion as a whole. Does anyone --

24 MR. LEBLANC: Your Honor --

25 THE COURT: -- anything further to say on that?

1 Yes.

2 MR. LEBLANC: Just one point in -- as we were
3 flipping through together the liquidating trust agreement, I
4 note that 6.2(a) allows -- and going back to one of your
5 first questions, Judge, about settlement procedures and
6 maybe how you can get comfortable approving the Cyrus deal
7 today; 6.2(a) does provide that upon the effective date, the
8 liquidating trustee could settle all claims regardless of,
9 you know, the amounts. So, in a way, you know, we're
10 getting ahead, but had the plan gone effective and the Cyrus
11 deal been cut -- Cyrus/PBGC deal been cut, there was a path
12 -- I'm not going to press, Your Honor.

13 THE COURT: Right, but we're not on that path
14 because Cyrus raised its point but it didn't want to wait
15 until the -- and nor did the other side.

16 MR. LEBLANC: Okay.

17 THE COURT: So, I don't think that works.

18 MR. LEBLANC: Okay.

19 THE COURT: Okay. I have before me the joint
20 motion of the -- I'm sorry. I do want to raise one final
21 point. I think this is right, but I would like you just to
22 double check. The liquidating trust retains all the assets
23 of the liquidating trust as provided for under the plan.
24 Because the parties wanted to pursue the litigation before
25 the effective date, the Committee was set up to do that.

1 I just want to make sure that there is no glitch
2 because of that and that that would somehow leave the
3 liquidating trust without those assets. I don't think
4 that's the case. I don't think that's what the parties
5 intended, but I think you should just double check that to
6 make sure that they're fully preserved, notwithstanding the
7 earlier order authorizing their pursuit by the Committee.

8 It's just -- you know, I'm aware of other cases
9 where a glitch like that basically gave a defendant a free
10 pass.

11 MR. SCHROCK: We'll double check it, Your Honor.

12 THE COURT: Okay.

13 MR. SCHROCK: Thank you.

14 THE COURT: So, as I was saying, I have before me
15 a motion by the Debtors and the Official Committee of
16 Unsecured Creditors which seeks two forms of relief, first a
17 comprehensive settlement or largely comprehensive settlement
18 of two sets of claims brought in two separate adversary
19 proceedings against the so-called insider defendants and
20 secondly against the public shareholder defendants. Those
21 proceedings are currently consolidated in Adversary
22 Proceeding No. 19-08250.

23 Secondly, and related to the status of when the
24 claims were pursued and when the settlement was entered
25 into, the Debtors seek a modification of the confirmed but

1 not effective date Chapter 11 plan relating to the
2 governance of the liquidating trust established under the
3 plan to go into effect on the effective date of the plan.

4 As discussed during this hearing, the settlement
5 motion was modified to reflect a further settlement with the
6 PBGC and Cyrus -- I'm using the defined term in the motion -
7 - that resolved their reservations of rights about
8 distribution of the settlement proceeds. The two sets of
9 claims comprise the most important remaining assets of the
10 Sears Debtors' estates. The Court clearly has jurisdiction
11 over the settlement motion.

12 It was specifically reserved under the plan and
13 confirmation order and is critical to the performance of the
14 plan and I specifically kept my own assignment in respect of
15 the matters covered by the settlement, notwithstanding my
16 retirement, as part of my recall, given my familiarity with
17 the issues which had been addressed, frankly, in one way or
18 another since almost the beginning of these cases in 2018
19 and certainly more specifically when the two adversary
20 proceedings were filed and motions to dismiss were filed,
21 objected to, and argued.

22 Settlements and compromises are a normal part of
23 the process of reorganization in bankruptcy and are strongly
24 favored, often even more so than in a non-bankruptcy
25 setting, given the additional issues regarding the rights of

1 various parties in interest, the time value of money, and
2 the like in a situation where the plaintiff is insolvent.
3 See Protective Committee of Independent Stockholders of TMT
4 Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

5 As that decision stated, in determining whether to
6 approve a settlement, the Bankruptcy Court must make an
7 informed independent judgment that the settlement is "fair
8 and equitable" and "in the best interests of the estate."

9 Based on the framework laid out in that case,
10 Courts in this Circuit have analyzed the following factors
11 in evaluating settlements: one, the probability of success
12 should the issues be litigated versus the present and the
13 future benefits of the settlement without the delay and
14 expense of litigation and subsequent appeals; the likelihood
15 of complex and protracted litigation if the settlement is
16 not approved, including the difficulty in collecting on the
17 judgment; the interests of creditors including the degree to
18 which creditors support the proposed settlement; whether
19 other interested parties support the settlement; the
20 competency and experience of counsel supporting and the
21 experience and knowledge that the Court -- that's for
22 appeals -- in reviewing the settlement; the nature and
23 breadth of the releases to be obtained by officers and
24 directors and other insiders; and the extent to which the
25 settlement is the product of arm's length bargaining.

1 That last factor affects the one that came just
2 before it. See Global Vision Products v. Truesdell, 2009
3 U.S. Dist. Lexis 64213, at *13-14 (S.D.N.Y., July 15, 2009).

4 The Court need not conduct an independent
5 investigation in formulating its opinion as to the
6 reasonableness of the settlement. Rather, the Court can
7 give weight to the parties' informed judgment that the
8 settlement is fair and equitable. See In re: Drexel
9 Burnham Lambert Group, Inc., 134 B.R. 493, 496 (Bankr. SDNY
10 1991).

11 The Court's responsibility is to canvass the
12 issues, see whether the settlement falls below the lowest
13 point in the range of reasonableness. In re: Nuevo Pueblo,
14 LLC, 608 F. App'x. 40, 42 (2d Cir. 2015), quoting In re:
15 W.T. Grant Company, 699 F.2d 599, 608 (2d Cir. 1983).

16 This proposed settlement occurs after confirmation
17 of the Chapter 11 plan in these cases, so the issue as to
18 whether the settlement's proposed distribution scheme
19 complies with the cod's priority scheme which is often
20 critical with respect to a preconfirmation settlement, is
21 not relevant here. See In re: Iridium Operating, LLC, 478
22 F.3d 452, 464 (2d Cir. 2007).

23 I will note in light of those considerations,
24 first, that after due notice there were no objections to the
25 settlement and the parties who filed reservations of rights

1 and who are most affected by the settlement -- that is,
2 those who might be arguing strenuously for there to be more
3 money paid, actually have supported the settlement. That
4 includes the PBGC, which stands next in line with a \$97.5
5 million priority claim junior to the claims that will
6 clearly be paid in full under the settlement, based on
7 today's record.

8 As far as the probability of success on the merits
9 is concerned, the issues at stake in these two litigations
10 are indeed, as counsel for the Committee stated, complex and
11 difficult and in some respects sui generis. They raise --
12 they constitute both difficult legal issues including the
13 extent of the safe harbor under Section 543(e) in the
14 Bankruptcy Code and choice of law issues pertaining to
15 potential applicability of statutes of limitations.

16 In one respect, they also include a collapsing
17 analysis with regard to the Seritage transaction litigation
18 and they include factual issues as well, including, most
19 importantly, what would inevitably, if motions to dismiss
20 were not granted, involve evidentiary valuation issues
21 pertaining to the transferor Debtor's insolvency at the time
22 of the transfers as well as whether it was inevitable even
23 in the absence of insolvency that their undercapitalization
24 would result in eventual insolvency and finally whether the
25 requisite intent could be shown or belief as to the ability

1 to pay debts as they came due in the future.

2 The aggregate claims asserted in the litigations
3 were substantially higher than the settlement amount
4 exceeding \$1.4 billion with the settlement amount of \$175
5 million with regard to the litigations themselves. However,
6 the merits, as I said, would require one to, in a settlement
7 context, discount those numbers by assessments of
8 probability of success.

9 In addition, the litigation, as I noted, would be
10 protracted and complex and therefore expensive and, as is
11 clear from the motion as well as the Court's judicial notice
12 of the Creditors Committee's motion for third-party funding
13 of the litigation, the Debtors' estate, absent an agreement
14 by professionals to work on a contingency fee basis, where
15 professionals really weren't willing to take substantial or
16 full risk on a contingency fee basis, might well have proven
17 it's sufficient to pursue the litigations to their
18 conclusion against very determined and well-heeled
19 adversaries.

20 The conclusion, I believe, clearly wouldn't occur
21 until the termination of appeals, so the time during which
22 creditors would wait for a distribution if the litigation
23 continued would be far longer than under the proposed
24 settlement. I think the motion is correct that it would be
25 at least two years, as opposed to 30 to 60 days from today.

1 The settlement is clearly the product of arm's
2 length bargaining by very capable counsel representing the
3 estate with the Debtors' counsel looking over their shoulder
4 and therefore, although the major parties to settlement on
5 the defendants' side are insiders, I do not find the
6 releases to be inappropriate here, the typical litigation
7 releases for the claims that are actually being litigated.

8 In addition to the arm's length nature of the
9 negotiations and the experience of the counsel and the
10 businesspeople supervising those litigations, this
11 settlement was also the product of a lengthy mediation with
12 three mediators, including a current colleague of mine,
13 Judge Chapman, a former colleague, former Judge Peck, and
14 what was described as an insurance mediator since a major
15 portion of the settlement involved accessing the Debtors'
16 insurance.

17 I want to thank all three mediators, in particular
18 -- although I don't want to single her out for the quality
19 of the work. I assume all three had very high-quality work,
20 but I want to thank in particular Judge Chapman who unlike
21 the other two, did it for free which is what we do for each
22 other. But where there is a heavily mediated settlement,
23 particularly one that is unopposed at the end of the day,
24 the Court takes considerable amount of comfort the
25 settlement is fair and reasonable and in the best interests

1 of the estate.

2 The last factor in respect of this settlement that
3 I want to address, which is unusual, is that it comes where
4 absent the settlement, there would be considerable concern
5 as to whether, A, administrative and secured creditors would
6 be paid in full as they're entitled to be, and thus, B,
7 whether the case would stay in Chapter 11 at all, whether
8 the confirmed plan would fail and an additional level of
9 administrative expense would be layered in, namely the cost
10 of a Chapter 7 case and a Chapter 7 Trustee.

11 There are always issues when there's a settlement
12 -- or often, at least, issues where there's a settlement
13 that leaves senior creditors paid in full or nearly in full
14 and more junior creditors with little or no recovery, and
15 the Court must, in that context, make sure that those who
16 are being paid in full are not causing the settlement to be
17 pursued in a way that shortchanges the others who are not
18 being paid in full.

19 I don't believe that has occurred here, and
20 importantly, there is the extra layer that I've just
21 described that those senior creditors, in addition to
22 running the risk of adverse decision and a delayed
23 distribution themselves might well be primed, if the
24 settlement was not approved, because of the very real
25 likelihood the case would be converted to Chapter 7.

1 So, it is clear to me that the proposed settlement
2 is fair and reasonable and in the best interest of the
3 estate, and I will approve it.

4 I do so with the mechanism that we discussed
5 earlier, which is that the Debtors will protect Cyrus'
6 interest, as Mr. Schrock described, until there is
7 sufficient notice of the Court's prior orders governing
8 proposed settlements of the Cyrus settlement, which was just
9 filed today, and I trust that the Second Circuit will
10 understand that that notice period will be short and that
11 the parties to the appeal would want a -- legitimately want
12 a ruling delayed just for that short period and for no
13 longer, and in fact, would welcome a ruling promptly after
14 that short period of the appeal which is currently sub
15 judice.

16 I noted during oral argument that the settlement
17 includes in it a contribution bar for non-settling parties.
18 Frankly, there are not many non-settling parties anymore at
19 this point. They're all in the public shareholder portion
20 of the litigation. Given the notice to them and the lack of
21 objection, I conclude that the contribution bar is
22 reasonable in the light of the Second Circuit caselaw,
23 including In re: Masters Mates and Pilots Pension Plan, 957
24 F.2d 1020, 1028-29 (2d Cir. 1992) and the District Court
25 cases that have construed it, including Carroll v. LeBoeuf,

1 Lamb, Green, & MacCrae, LLP, 2008 U.S. Dist. Lexis 54042 at
2 Page 9 (S.D.N.Y. July 16, 2008).

3 Given the role of the settling parties and the
4 non-settling parties, I believe that the equities do not
5 favor a mutual bar as some Courts have considered, but
6 simply a bar of the settling parties, since -- I'm sorry, in
7 favor of the settling parties, given who's left and their
8 belief as to their ultimate proportionate share of
9 liability, that there is no liability whatsoever. See
10 Gerber v. MTC Electronic Technologies Company, Ltd., 328
11 F.3d 297, 309 (2d Cir. 2003) and the ruling by the District
12 Court on remand on the mutual bar issue, Kayne v. MTC
13 Electronic Technologies Co., 2005 U.S. Distr. LEXIS 10312,
14 (E.D.N.Y. May 30, 2015).

15 Let me turn then to the aspect of the motion that
16 seeks modification of the confirmed plan. Under Section
17 1127(b) of the Bankruptcy Code, the Court has the power on
18 motion by the plan proponent, the Debtor, to approve
19 modification of a confirmed plan that has not been
20 substantially consummated. It's clear here that the plan in
21 fact has not even gone effective and, therefore, it has not
22 been substantially consummated.

23 The Court, when faced with such a motion, looks at
24 three main points where the plan has not been substantially
25 consummated. First, whether the modification represents a

1 minor change to the plan that does not affect legal
2 relationships of the parties that would affect their
3 distribution, for example, or other rights that would be
4 material under the plan.

5 Second, has the party seeking the modification
6 demonstrated that the circumstances warrant the
7 modification. And third, whether the separate disclosure
8 requirement under Section 1127(c) of the plan has been
9 implicated; that requirement not being a requirement in all
10 circumstances, or one and all circumstances pertaining to a
11 modification sought under Section 1127(b).

12 The Court also has to ensure itself that the plan
13 does not violate -- as modified, does not violate Sections
14 1122 or 1123 of the Code and would still be subject to
15 confirmation under Section 1129 of the Code.

16 As to that latter point, I am satisfied that
17 that's the case. That's largely -- well, in fact, entirely,
18 because the modifications requested and as slightly amended
19 based on the colloquy during oral argument are indeed minor
20 and do not alter the legal relationships among the Debtor
21 and its creditors and other parties in interest, such that
22 the change would be significant, as opposed to minor changes
23 of procedure.

24 Here, the proposed modifications all reflect what
25 the Court has actually approved in connection with

1 confirmation, which is that the function of the trust and
2 the Liquidating Trust Board be fulfilled by the Post-
3 Confirmation Committee authorized to oversee the conduct of
4 the litigations that are being settled, which were the
5 primary litigations to be pursued by the trust if the
6 effective date had occurred.

7 There's no reason to have that Board anymore. It
8 would clearly not be in the interest of any creditor to
9 continue the Board. The oversight function that would have
10 been performed by the Board is not adequately performed by
11 those who would have the most interest currently in the
12 remaining assets and the making of distributions, namely the
13 PBGC and Cyrus. For the same reason, the circumstances
14 warrant modification, given the outcome of litigation and
15 the timing of the effective date in light of the settlement.

16 And finally, also for the same reason, a modified
17 disclosure statement and a potential resolicitation are not
18 warranted. The reason for the modifications is amply
19 described in the settlement motion, and the notion that a
20 creditor would have a right revote on the plan in light of
21 these minor changes is simply not credible. See generally
22 the discussion in *In re Boylan Int'l, Ltd.*, 32 B.R. 43, 47,
23 and as to disclosure, 51-52 (Bankr. S.D.N.Y. 2011) and the
24 cases and authorities cited therein, including H. Rep. No.
25 95-595, 95th Cong., 1st Sess. 411 (1977), where Congress

1 noted that if the plan modifications are minor, "the court
2 might determine that additional disclosure was not required
3 under the circumstances."

4 So, I can certainly make the findings necessary
5 under 1127(b) and approve the modifications. I think the
6 order itself actually needs to be revised a little bit to
7 reflect that the plan, as modified, is confirmed, which is a
8 requirement of 1127. It's partly there, but I don't think
9 entirely there in the draft that was provided.

10 So, I'll look for a revised order and it should be
11 entered either today or tomorrow, if it gets in, depending
12 on when it gets in.

13 MR. SCHROCK: Great, Your Honor. Thank you.
14 We'll get you a revised order as promptly as we can.

15 THE COURT: Okay, great. I urge the people not to
16 spend too much time or brain cells on the reservation on
17 distributions to protect Cyrus. I think the record -- I
18 think, as Mr. Schrock described it, is clear and is
19 sufficient. So, I hope that can be done, just based on what
20 was stated on the record, without any further negotiation or
21 involvement of the mediators.

22 MR. SCHROCK: That would certainly be our goal,
23 Your Honor.

24 THE COURT: Okay. And, look, if there's some
25 dispute, just each side submit to me your language right

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1 away, rather than trying to resolve it, and I'll just choose
2 the language that I think works.

3 MR. SCHROCK: Very good, Your Honor. I think we
4 should be able to work through it, but we'll make sure to do
5 that today.

6 THE COURT: So, I think there may be a number of
7 people who are on the line who were on just for that, and
8 you can certainly be excused. And then we can just go down
9 the rest of the agenda.

10 The next matter is really on for presentment. And
11 I do have myself retained authority over this one. It's the
12 settlement with Oracle America, which is tied into the
13 settlement with Transform that I just approved. So, noting
14 that it's unopposed and was on notice of presentment on due
15 notice, that will get entered by me accordingly, and I think
16 you emailed the proposed order to me yesterday. So, that
17 will get entered.

18 MR. DIZENGOFF: Thank you, Judge.

19 THE COURT: And then the next matter is the
20 application of the Ad Hoc Group of Administrative Claimants,
21 under Sections 503(b) (3) and (b) (4) of the Bankruptcy Code,
22 for a substantial contribution award.

23 MR. MORGAN: Good morning, Your Honor. Brian
24 Morgan from Faegre Drinker Biddle & Reath, on behalf of the
25 Ad Hoc Group of Admin Claimants. I recognize that I'm a

1 recent addition to this case. The Group was formerly
2 represented by Ms. Morabido, who now represents the Admin
3 Expense Claims representative.

4 Your Honor, by way of the application, as you
5 noted, we're seeking an order allowing as an administrative
6 priority claim and authorizing the Debtors to reimburse the
7 reasonable fees and expenses incurred by the Ad Hoc Group
8 and making a substantial contribution to these Chapter 11
9 cases. We're moving under 503(b)(d) and 503(b)(4), or
10 503(b)(1) in the alternative.

11 The motion is uncontested and the Debtors support
12 the relief requested therein. The Relator, Carl Ireland,
13 did file a reservation of rights with respect to the
14 application, in which he raised concern about payment of the
15 claim prior to the effective date.

16 As has been discussed today, that claim's been
17 reserved for, so we don't think that payment of this
18 substantial contribution claim would impact that. In any
19 event, we're prepared to -- or do agree, rather, to payment
20 on the effective date. And we'll submit a proposed order,
21 which has been revised, to that effect, which should cure
22 that concern.

23 The contributions of the Ad Hoc Group to this case
24 are detailed in our papers, and I know Your Honor is very
25 familiar with the leadership role that they played, having

1 briefly recognized that they served at the fulcrum point for
2 the negotiations with respect to the admin claim consent
3 program.

4 I'm happy to answer any questions Your Honor may
5 have, but otherwise, we'd rely on our papers, the
6 declarations submitted in support, and ask that the relief
7 sought in the application be granted.

8 THE COURT: Okay. I don't doubt that the
9 Committee is entitled to a substantial contribution claim.
10 Their role in this case falls within the case law, including
11 the Granite Partners case that I think is still the leading
12 case, 213 B.R. 440 (Bankr. S.D.N.Y. 1997), but see also In
13 re Synergy Pharmaceuticals Inc., 621 B.R. 588, 609-10
14 (Bankr. S.D.N.Y. 2020), and the other cases that you've
15 cited in your pleadings, including the Bayou case.

16 This group did in fact play a leadership role that
17 was essentially different than the normal role of a
18 creditor, and it led ultimately to the appointment of a
19 representative of all the administrative claimants, which I
20 think, frankly, without officially assuming those duties,
21 the Ad Hoc Group was doing.

22 But I do have one issue, which is although I have
23 the three declarations, which satisfies one element of the
24 showing besides the requirements laid out in Granite and
25 Synergy Pharmaceuticals, and In Re Bayou Group, 431 B.R.

1 549, 562 (Bankr. S.D.N.Y. 2010), I don't have any time
2 records.

3 And to determine the reasonableness of the fee --
4 and I appreciate it's half of what was paid -- I need to
5 look at those, I think, under the case law and the
6 commentary, which says that with one caveat, in determining
7 the reasonableness of the fee, the Court should apply the
8 standard of Section 330 of the Code. That caveat being that
9 under 503(b)(4), you don't look at what was reasonable for
10 the lawyer at the time. That is an element of it, but you
11 also look at the whole substantial contribution amounts,
12 which I've already done. But what I haven't done is
13 consider the time records.

14 So, I will -- and for this proposition, see In re
15 Bayou Group, 431 B.R. 566 and at note 18. See also In re 29
16 Brooklyn Avenue, LLC, 548 B.R. 642, 652 (Bankr. E.D.N.Y.
17 2016).

18 So, I think what I need to do is I will grant the
19 application, but fix the amount, whether it's \$750,000 or
20 something less than that, just based on a reasonableness
21 determination after I've had a chance to review the time
22 records, which I'll do promptly if someone sends those to
23 me.

24 MR. MORGAN: Understood, Your Honor. And just so
25 I'm clear, we can submit those in-camera in order to avoid -

1 -

2 THE COURT: Yeah.

3 MR. MORGAN: -- having to redact records?

4 THE COURT: That's fine. That's fine. I need to
5 satisfy myself that I, you know... For example, those time
6 records for the \$750,000 don't have duplicate entries, don't
7 have multiple people billing for the same task, those sorts
8 of things.

9 MR. MORGAN: I appreciate that, Your Honor. We
10 can send you those records today.

11 THE COURT: All right. Very well.

12 MR. HARNER: (indiscernible) It's Paul Harner, the
13 Examiner. I think that's a very reasonable approach, and I
14 don't think that requires our involvement. And
15 congratulations, by the way. It's your last day. But I
16 think that's a very reasonable, does not require our
17 involvement, and --

18 THE COURT: No, I don't think it does. I don't
19 think this --

20 MR. HARNER: If you're --

21 THE COURT: I don't --

22 MR. HARNER: If you're willing to do that, that
23 would be great.

24 THE COURT: All right. Well, I'm more -- I have
25 to do it, and I don't require the Examiner to do it. I

1 don't believe it's required under the order appointing you
2 to review this type of application.

3 MR. HARNER: Okay.

4 THE COURT: So, you should not feel that you need
5 to do that. So, speaking of your duties, though, the next
6 matter on the calendar are the interim fees, and then that's
7 followed by final fee applications.

8 My inclination is to take the final fee
9 applications and skip the interim fees, which I think we
10 each applicant -- unless I'm missing something -- are
11 incorporated into the final applications.

12 MR. SCHROCK: They are. They are, Your Honor.

13 THE COURT: Okay. I mean, I've reviewed them, as
14 I reviewed all of the interim applications, but since
15 they're incorporated in the final ones, I think I'd like to
16 turn to the final fees.

17 MR. SCHROCK: Thanks, Your Honor. I'm happy to
18 kick it off here, Your Honor. As you noted, we'd adjourned
19 the hearing on the 10th interim applications and filed the
20 11th interim and final applications for the period
21 thereafter.

22 There are no objections on the substance of the
23 applications. And as noted in the report by the Fee
24 Examiner -- and I feel free to turn it over here to Mr.
25 Harner here in just a moment -- each of the professionals

1 reached agreements regarding their applications.

2 There was a substantial amount of dialogue,
3 certainly, between the Fee Examiner and myself as we were
4 working through this. Resolutions reached were incorporated
5 into the proposed order and filed with the Court yesterday.
6 The reductions, which I'm sure Mr. Harner will go through,
7 have been noted.

8 The amounts that the professionals have agreed to
9 take care here, we believe are fair and reasonable. And we
10 do note that -- and we'll certainly, if any party wants to
11 speak up under their reservations of rights that were noted
12 regarding the timing of payment -- I would note that
13 although these amounts are large, this was an extraordinary
14 complex case, and the amount of work done here over the past
15 four years has been nothing short of, frankly,
16 extraordinary.

17 And it's not so large in comparison to the over \$4
18 billion in amounts satisfied post-petition by the Debtors
19 for administrative claimants, including during the time in
20 which the Debtors operated as one of the country's largest
21 retailers. Landlords, vendors, contract counterparties,
22 taxing authorities, employees; all of the parties were paid.
23 And each of the applicants can appear at their own request.

24 But if Your Honor has no questions, we certainly
25 are supportive of all the applications being granted, and I

1 would, frankly, turn it over to Mr. Harner and ask if he'd
2 like to add anything.

3 MR. HARNER: (indiscernible)

4 THE COURT: I'm sorry. Can I interrupt? Because
5 maybe you could address this too --

6 MR. SCHROCK: Yes.

7 THE COURT: -- in addition to what else --

8 MR. SCHROCK: Sure.

9 THE COURT: -- you were going to say. Either Mr.
10 Harner or Mr. Schrock. I received the proposed final fee
11 order and I also, I think, understand, because I received a
12 chart at our request from the Fee Examiner as to the
13 negotiated reductions. And I'm... In some respects, I just
14 don't know what to make of the information on the final fee
15 order. So, if people have that chart --

16 MR. SCHROCK: Yes.

17 THE COURT: -- they should take it out. And what
18 I'm getting to is, in some places the chart shows more fees
19 paid than fees requested, not by a lot. But for example,
20 for Herrick Feinstein, Weil Gotshal, and Paul Weis.

21 So, for Herrick Feinstein, it says total fees
22 requested \$3,710,104. And it says total fees paid,
23 \$3,869,802. And there's similar for Weil and Paul Weis,
24 although the amount of difference is smaller.

25 So, I just don't -- when it says total fees paid,

1 is that to be paid? I'm just trying to understand why --

2 MR. FAIL: No, Your Honor. I --

3 THE COURT: -- there's more paid than --

4 MR. FAIL: I can try --

5 THE COURT: -- the amount requested.

6 MR. FAIL: I could try to take this, Your Honor.

7 It's Garrett Fail, from Weil, for the Debtors.

8 MR. HARNER: Garrett, could you hold on for a
9 second? And of sorry to interrupt, Your Honor, but I think
10 Ms. Daluz may be able to address that, because there are
11 some inconsistencies in what was paid when and so on and so
12 forth. And we probably did not to a very good job of
13 describing all of that on the chart.

14 THE COURT: Okay.

15 MR. HARNER: But Ms. Daluz may be able to cast
16 some light on that.

17 MS. DALUZ: Well, I think one point of
18 clarification -- good afternoon, Your Honor. Tobey Daluz,
19 from Ballard Spahr, on behalf of the Examiner. I think
20 you're referring to right now the charts that are attached
21 to the fee order.

22 THE COURT: Yes.

23 MS. DALUZ: And if that's the case, then that was
24 drafted by Weil Gotshal, and Mr. Fail would probably be able
25 to enlighten the matter.

1 THE COURT: Okay.

2 MS. DALUZ: I think, perhaps, Mr. Harner, I
3 thought you were referring to the chart that we sent to you
4 yesterday at your request --

5 THE COURT: No --

6 MS. DALUZ: -- which I'm happy to walk you
7 through.

8 THE COURT: No, I'll get to that in a moment. But
9 I just -- on the fee order, maybe -- Mr. Fail, can you tell
10 me what the explanation is for that?

11 MR. FAIL: Yeah. The explanation at a high level
12 is we tried to comply with the form that's required, which
13 requires the columns to say, "requested and paid". And so,
14 what we did here in the text of the order was to say that
15 the fees requested would be allowed. Because it doesn't
16 have -- the form order doesn't have "requested" and a column
17 for "allowed".

18 So, we reduced the requested by the voluntary
19 reduction, and the reduced amount reflecting the agreements
20 will be, therefore, approved.

21 However, as a result of the interim compensation
22 orders, amounts had been paid in excess in some cases. But,
23 because this period covered for -- the application goes
24 through June and we're already through August, the Debtors'
25 professionals and the Debtors will work so that there is a

1 true up. So, we complied with the form --

2 THE COURT: Right.

3 MR. FAIL: -- and it shows accurately that they've
4 received for the period through June in some instances more
5 than will be allowed. However, there is work that has been
6 paid for July and August, and therefore, true ups will be
7 made such that no amounts in excess net will be paid.

8 THE COURT: Okay. So, I think, just as far as the
9 chart is concerned, then you should add that to the
10 footnote, that... And I think it's just for those three
11 firms. I don't think there's an issue -- no, FTI has the
12 same issue, as does --

13 MR. FAIL: Right.

14 THE COURT: -- as does Kroll. Wherever there is
15 that point and --

16 MR. FAIL: You could almost disregard the fee.
17 You could almost disregard the --

18 THE COURT: Well, I think what you should say is
19 that there will either be a true up as against the total
20 fees requested, or if that isn't sufficient -- if there's
21 not enough to make a true up, then there'll be disgorgement
22 to reflect the total fees requested.

23 MR. FAIL: Not a problem. That's consistent with
24 the understanding, Judge.

25 MR. HARNER: Your Honor, it's Paul Harner, and

1 that sounds exactly correct to me.

2 THE COURT: Okay.

3 MR. HARNER: I think that's what we should do.

4 THE COURT: Okay. And then I did have another
5 question on the chart that Ballard Spahr provided. Just
6 doing the math, and now I think as far as the total fees
7 requested point is concerned the columns other than for --

8 MR. FAIL: That was prior to the reduction, Judge.

9 THE COURT: Other than for Akin --

10 MR. FAIL: That's why the numbers (indiscernible).

11 THE COURT: -- except for Akin Gump. I think Akin
12 Gump, the total fees requested... Well, Akin Gump should
13 tell me. Is it the same thing that -- the 51 number is the
14 reduced number?

15 MS. BRAUNER: Yes, Your Honor. Sara Brauner, Akin
16 Gump, on behalf to the Committee. That's correct.

17 THE COURT: Okay. And I think that's the case,
18 then, for all of the professionals, that the total fees
19 requested column reflects the negotiated reductions agreed
20 to between the various professionals and the Fee Examiner.
21 That's right, I think. Right?

22 MS. DALUZ: Your Honor, in fact the chart that we
23 sent to you, we calculated total fees requested merely by
24 adding up everybody's final fee application amount. So,
25 there would be a discrepancy between our chart and the

1 charts that are attached to the final fee order.

2 So, if you were looking at the total fees
3 requested column on our chart and then the negotiated --

4 THE COURT: Yeah. No, I --

5 MS. DALUZ: -- reductions --

6 THE COURT: I took that total fees requested and
7 then deducted the reductions.

8 MS. DALUZ: Exactly.

9 THE COURT: And --

10 MR. FAIL: Yes, Your Honor.

11 THE COURT: And I think that does foot to the
12 total fees requested column in the proposed order. Correct?

13 MR. FAIL: Yes, Your Honor.

14 THE COURT: Okay.

15 MS. DALUZ: By maybe a few thousand dollars off.

16 But we think it's a rounding error.

17 THE COURT: Well --

18 MR. HARNER: Yes.

19 MS. DALUZ: We hope -- it's for a few thousand --

20 I mean, literally three or four thousand dollars, Your
21 Honor.

22 MR. HARNER: (indiscernible)

23 THE COURT: I'm sorry, Mr. Harner. You're not
24 coming through.

25 MR. HARNER: (indiscernible)

1 THE COURT: Okay. All right. So, my last
2 question is a small one, which is I think I have final fee
3 applications, except from McAndrews, Held & Malloy. Are
4 they going to do a final fee application? I mean, they
5 should. Does anyone know what their status is?

6 MR. HARNER: Well, sure. What we expect is that
7 they will. The Fee Examiner is going to be discharged but
8 there were three firms that did not submit final fee
9 applications by the August 9th deadline that was set. So if
10 they do, unfortunately, I suppose that Judge Lane will need
11 to review those. But they have not been submitted.

12 THE COURT: So, there are three of those.
13 McAndrews, Held & Malloy, and Stout Risius Ross. I'm not
14 sure what those two firms do. Are they done, as far as...

15 MS. DALUZ: Your Honor, our understanding is that
16 -- Tobey Daluz again, for the record -- that McAndrews Held
17 was an IP firm and Stout Risius was a real estate firm. I
18 believe Stout Risius worked closely with the Akin Gump firm.
19 In fact, later we've seen that some of the bills appear as
20 expenses in connection with the litigation, or other matters
21 being handled by the Committee. So maybe Akin Gump can give
22 more color on those firms. The same with respect to Ask,
23 who has a bifurcated retention. Part of it was on a
24 contingency fee basis, which we would not be -- we reviewed
25 to make sure it was in accordance with their retention --

1 THE COURT: Right.

2 MS. DALUZ: -- and their exhibits. But we did not
3 review for reasonableness.

4 THE COURT: Right.

5 MS. DALUZ: This litigation designee retention
6 would be reviewed for reasonableness. Both of those firms,
7 the amounts are de minimis, frankly, in the context of the
8 overall fees in the case. And so we thought if they just
9 missed the deadline and could file a fee application, that
10 the parties that remain in the case, the Debtor and the
11 Judge would be able to address them appropriately.

12 We're happy to share our review and what we found
13 objectionable with anybody of the Debtors' counsel or with
14 the Judge, if he so requests. McAndrews Held, we don't have
15 any input on a dollar amount on a total basis. It's a
16 little bit higher, but not one that -- it's only \$600,000 or
17 so, and not one that we thought should, you know, slow this
18 process.

19 THE COURT: So, as far as Stout Risius is
20 concerned, maybe Ms. Brauner, are they still working?

21 MS. BRAUNER: So, they're not, Your Honor. And I
22 would defer to my partner, Dean Chapman, to provide
23 additional color on their role in connection with the
24 adversary proceeding.

25 THE COURT: But it's not expected that they're

1 going to be doing any material work going forward, right?

2 MS. BRAUNER: That's correct.

3 THE COURT: And what about --

4 MS. BRAUNER: That's correct.

5 THE COURT: This is not just -- I'm not even sure
6 whether there Committee professionals or Debtor
7 professionals. McAndrews Held & Malloy?

8 MR. FAIL: They were Debtors' professionals,
9 Judge. I don't know whether they're continuing to do
10 anything. I don't think they are. And so I think this was,
11 as Ms. Daluz pointed out, just -- Daluz pointed out that
12 this was just that they didn't file finals --

13 THE COURT: Right.

14 MR. FAIL: -- in the timeframe. And so it's
15 without prejudice to their ability to seek final
16 compensation --

17 THE COURT: And Ask LLP does have this bifurcated
18 arrangement. Some of their work is on contingency fee.
19 That's never been subject, really, to the Fee Examiner's
20 review, and I've been dealing with their statements. And
21 then there's some small portion that I guess is not.

22 But again, this is probably a question for the
23 Committees. Are they doing any -- I'm assuming they're not
24 doing any additional work, other than the preference work at
25 this point.

1 MS. GOLDBERG: Your Honor, this is Aron Goldberger
2 speaking --

3 THE COURT: No, before you speak, I just want to
4 have the Committee answer that question.

5 MS. BRAUNER: Sure, Your Honor. Sara Brauner, for
6 the Committee. Ask is currently prosecuting the public
7 shareholder actions as well, so pending --

8 THE COURT: Okay.

9 MS. BRAUNER: -- resolute those issues --

10 THE COURT: All right.

11 MS. BRAUNER: -- would be when (indiscernible) --

12 THE COURT: So they might do something. So, my
13 inclination on those three firms is, in the paragraph that
14 relieves the Fee Examiner of his duties going forward, have
15 a proviso that the Examiner will provide the -- I guess it
16 would be the Liquidating Trustee -- he's the one that would
17 be objecting -- or it's the one that would be objecting to
18 claims, right --

19 MR. FAIL: Yes, Judge.

20 THE COURT: With your analysis of any interim
21 applications?

22 MS. DALUZ: Just to be clear, Your Honor, we have
23 --

24 THE COURT: Put those three to the front.

25 MS. DALUZ: Absolutely. And just to be clear, we

1 have provided that feedback to each of those firms already.
2 It is subject to 408 confidentiality settlement provisions.
3 So I just want to state that on the record, so that all
4 parties are aware that they'll be given to the Trustee.

5 THE COURT: And that's --

6 MR. HARNER: (indiscernible)

7 THE COURT: And that would be in the order too --

8 MR. HARNER: -- Your Honor --

9 THE COURT: -- so I would be directing the
10 Examiner to do that.

11 MR. HARNER: Yeah, but Your Honor, that would be
12 completely consistent with my view and --

13 THE COURT: Okay.

14 MR. HARNER: -- and being (indiscernible) again if
15 (indiscernible) this entire process under the umbrella of
16 confidentiality and Rule 408 and so on and so forth. So
17 that would be completely consistent with my view, yes.

18 THE COURT: Okay.

19 MR. HARNER: Yes, sir.

20 THE COURT: All right. So, I --

21 MS. GOLDBERG: Your Honor, this is Aron Goldberg,
22 because I just want to clarify --

23 THE COURT: Please, Ms. Goldberg. I'll hear you.

24 I'm just trying to get all my questions out on the table,
25 and then I was going to go back to Mr. Harner, who was going

1 to address in more detail his review of the fees as the Fee
2 Examiner.

3 MS. GOLDBERG: I just want to clarify -- I'm just
4 trying to clarify if it was stated that there was no
5 objection to final fee applications.

6 THE COURT: I have your objection.

7 MS. GOLDBERG: Okay.

8 THE COURT: I'll hear you. I'm just trying to get
9 my questions answered and --

10 MS. GOLDBERG: Okay. I just thought I heard -- I
11 thought I heard that there was no objections.

12 THE COURT: I have your pleading.

13 MS. GOLDBERG: Okay. Thank you --

14 THE COURT: Okay.

15 MS. GOLDBERG: -- Your Honor.

16 THE COURT: So, in each of the interim
17 applications, including those that preceded Mr. Harner's
18 appointment as the Fee Examiner, I've recognized, and in t
19 he post-appointment ones, it's in the orders, that the Fee
20 Examiner's rights are fully reserved for the final
21 applications.

22 I think he had some input during the process
23 behind the scenes with applicants as to, you know, is
24 thinking about interim applications, but his rights were
25 reserved until the end. And the statement that he filed in

1 connection with the final fee applications reflects that he
2 was actively pursuing negotiations, and his comments with
3 all of the final applicants, and those would either reach an
4 agreement or he would raise the issues at the finals fee
5 hearing.

6 We've been informed that there was an agreement on
7 all of the final applications. But having made that
8 groundwork, if you want to say further anything about your
9 process and where you came out, Mr. Harner, you can go ahead
10 at this point.

11 MR. HARNER: Well, yes, Sir. And thank you, Your
12 Honor. There were literally more than 100-plus interim and
13 final fee applications filed in this case. And we submitted
14 -- as I said, on a totally confidential basis, tens if not
15 close to 100 preliminary reports on those. And again, --
16 and then -- but we kept those completely and totally
17 confidential and under the (indiscernible) of Evidence Rule
18 408.

19 We then reached a final resolution on most of the
20 final fee applications with the help of Mr. Schrock and Mr.
21 Fail and others in the last couple of weeks. And it was
22 contributory to getting us across the finish line -- not us
23 -- everybody across the finish line.

24 Was I happy about where those came out? Probably
25 not. But that's the nature of settlement. And Mr. Schrock

1 said that earlier about the nature of the global settlement
2 in the case. But we did that because it was the right thing
3 to do.

4 So, you know, I think with all (indiscernible) a
5 couple or two or three firms who didn't file -- it's three
6 firms that file final applications --

7 THE COURT: Right.

8 MR. HARNER: -- we got there and it was the right
9 thing to do. It wasn't at the level, Your Honor, of what I
10 would have liked to have seen. Probably not. But that's
11 the nature of settlement. So, now I'll shut up.

12 THE COURT: So, have you reached agreement with
13 everyone except for the three firms that I had already
14 mentioned that haven't made a final application?

15 MR. HARNER: Yes, Sir. Yes, Sir.

16 THE COURT: All right.

17 MR. HARNER: Right.

18 MS. BRAUNER: Just one point --

19 MR. HARNER: (indiscernible)

20 MS. BRAUNER: -- of clarification, Your Honor.

21 Sorry. Stout is not a law firm. Stout was an expert
22 retained.

23 THE COURT: Okay.

24 MS. BRAUNER: So just for clarification --

25 THE COURT: Right.

1 MS. BRAUNER: -- they would not be filing a fee
2 application --

3 MR. HARNER: (indiscernible) and I'm sorry, Your
4 Honor. I should have been clear about this. We were
5 reviewing the fees of not just law firms --

6 THE COURT: Right.

7 MR. HARNER: -- but advisory firms.

8 THE COURT: If they were retained under Section
9 320 -- well, the equivalent for the Committee under 1104,
10 they should file a fee app, as Deloitte and FTI and Alvarez.

11 MR. CHAPMAN: Your Honor, just so --

12 MR. HARNER: (indiscernible)

13 MR. CHAPMAN: Dean Chapman -- just so the record
14 is perfectly clear --

15 MR. HARNER: Yes.

16 MR. CHAPMAN: Stout performed --

17 MR. HARNER: Yes. Correct.

18 MR. CHAPMAN: Stout performed two functions in the
19 case. They were real estate advisors to the Restructuring
20 Subcommittee, the Paul Weis Group, back during the Rule 2004
21 investigation in 2018 and 2019. So that was Phase 1. Phase
22 2, we retained them as experts to the Committee, the
23 litigation designees in the, I think, adversary proceeding.
24 So I think that might explain --

25 THE COURT: So it's Phase 1 that they need to do a

1 final on.

2 MS. BRAUNER: That's right, Your Honor.

3 THE COURT: As Phase 2, I assume they're a part of
4 the expenses.

5 MS. BRAUNER: Correct.

6 THE COURT: (indiscernible) expenses.

7 MS. BRAUNER: That's right.

8 THE COURT: Okay. All right. So, most of these
9 fee applications are unopposed. Two are not. The Weil
10 Gotshal and Akin Gump applications. And there was a limited
11 objection by Orient Craft Ltd. and an objection by Kingdom
12 Seekers Inc. to both of those applications.

13 And just for the record, in addition to the self-
14 editing that those firms have done periodically and
15 including in respect of the final fee applications that they
16 submitted, each of those firms reduced their fees by \$1
17 million.

18 So, I believe Ms. Goldberger is speaking on behalf
19 of Kingdom Seekers, Inc., and I don't know whether I have
20 counsel for Orient Craft. Why don't I deal with Orient
21 Craft's objection first, since it was a limited one; was
22 dealing with the issue that we dealt with a fair amount at
23 the beginning of this hearing in the morning about the
24 reasonable assurance of payment or reserve for payment of
25 administrative priority and secured claims?

1 But Mr. Wander, are you still pursuing the
2 objections?

3 MR. WANDER: Your Honor, can you hear me?

4 THE COURT: Yes.

5 MR. WANDER: Good morning, Your Honor, or
6 afternoon. David Wander, of Tarter Krinsky & Drogin,
7 counsel for Orient Craft. Your Honor, I've made my views
8 well known throughout this case when I was first
9 representing Pearl Global at the confirmation hearing, and
10 thereafter when I was represented to administrative
11 creditors, H.K. Sino-Thai Trading and now Orient Craft,
12 which is an opt-out creditor.

13 I don't need to repeat what I've said at various
14 times in this case. I have a different view of the case.
15 But at this point, Your Honor, I just would just to get my
16 client paid and move on and wish Your Honor good luck in the
17 next phase of Your Honor's case. And to thank Your Honor
18 for listening to me when I spoke, and whether you agreed
19 with what I said or not, you always gave me a fair hearing,
20 so to speak. And for that, I thank you. And there's
21 nothing further I need to say at this point.

22 THE COURT: Okay. So I think, then, at this
23 point, you're not pursuing the limited objection because as
24 I understand it, the law firms have agreed that they would
25 not get paid in advance of the effective date, and we

1 discussed at the beginning of the hearing, there would be
2 either payment for the non -- there would be payment for the
3 opt-out creditors on the effective date.

4 MR. WANDER: Yes, Your Honor. And I thank the
5 administrative claims representative and counsel for
6 protecting the opt-outs. And so, with that in mind, I think
7 my objection speaks for itself, but I'm not pursuing
8 anything other than having my client get paid.

9 THE COURT: Okay. All right. You know, before I
10 hear from Ms. Goldberger, I did have one more question. And
11 it came up in the context of a reservation of rights by the
12 administrative claims representative, which referenced a
13 contingency fee or a potential contingency fee arrangement
14 with Akin Gump. Is that an agreement that was never
15 executed? What is the status of that? Because as I read
16 the fee application, it's on an hourly basis. It's not on a
17 contingency fee basis.

18 MAN 1: Your Honor, that's correct. It was never
19 -- it never got to fruition, partly because the trust ran
20 out of money and needed additional financing. So there were
21 drafts exchanged, but never got to fruition.

22 THE COURT: Okay. So, Mr. Harner, did you look
23 into that issue? I mean, I certainly didn't approve
24 anything under 328(a), so I'm not sure what the status of
25 such an agreement would be if it had been executed. But, I

1 mean, frankly, I don't know what the contingency -- the
2 people that they're talking to would be, but on \$175
3 million, it could conceivably be more than the litigation
4 fees that Akin Gump has agreed to accept.

5 MR. HARNER: Your Honor, maybe Ms. Daluz could
6 address that. We have not looked into that issue in detail.
7 Let me put it that way.

8 THE COURT: All right.

9 MAN 1: Your Honor, just to be clear, there is no
10 contingency fee. There is no --

11 THE COURT: All right. It was just something that
12 -- it was discussed --

13 MAN 1: It was discussed --

14 THE COURT: It was in the draft --

15 MAN 1: Correct, it was discussed --

16 THE COURT: -- but not final.

17 MAN 1: Correct.

18 THE COURT: Okay. So, that's fine.

19 MAN 1: That's correct.

20 THE COURT: Maybe that's all I need --

21 MAN 1: (indiscernible)

22 THE COURT: That's all I need to hear.

23 MAN 1: (indiscernible) And I'm sorry, Your Honor.
24 But that makes sense to me. Yeah, correct.

25 THE COURT: Okay. All right. Okay. So, why

1 don't I hear, then, Kingdom Seekers' objections to the two
2 fee applications?

3 MS. GOLDBERG: Everyone, this is Aron Goldberg on
4 behalf of Kingdom Seekers Inc. So, just to summarize the
5 objection that we're moving forward with, these new
6 application fees were submitted after Kingdom Seekers Inc.
7 was allowed to be heard for our motion. So, we're basically
8 objecting to this application fees because we think that we
9 should be allowed to be heard first before the application
10 fees can be approved.

11 THE COURT: Okay. Well, I have reviewed the
12 objection, as well as the underlying motion that you refer
13 to. And I'll note the following things. First, the Court
14 previously addressed an objection by the Debtors to two
15 claims filed in these cases by Kingdom Seekers Inc., Claim
16 Numbers 26515 and 26517. And I granted that objection in an
17 order dated November 16, 2021.

18 As I explained at the hearing on the objection,
19 which was on November 10, 2021, the objection did not object
20 to the allowance of the claims, but rather only to the
21 claims' assertion that they were secured and/or that they
22 were entitled to administrative expense or priority status
23 under Section 507 of the Bankruptcy Code, more specifically,
24 entitled to priority under Section 507 as to wages and
25 benefits earned within 180 days of the petition date and/or

1 507(a)(2) and 503(b), as a post-petition administrative
2 expense.

3 It was clear from the documents in the claim and
4 the assertions in the claim that there was no lien securing
5 the claim, the claims plural, and that the claims didn't
6 fall within the time limitations set up by Congress for
7 administrative expense claims or priority claims; that they
8 arose no later than 2016, well before the petition --

9 MS. GOLDBERG: This particular objection --

10 THE COURT: Ma'am, I'm laying out the basis for my
11 prior ruling.

12 MS. GOLDBERG: Mm hmm.

13 THE COURT: Since then, Ms. Goldberg has
14 corresponded with the Court -- she's pro se -- and was
15 informed that if she seeks relief from that order, she would
16 need to make a motion either under Rule 60 or Rule 59 of the
17 Bankruptcy Rules. I don't believe she ever appealed the
18 order. And I believe that is what is currently before the
19 Court, having been filed on June 15, 2022.

20 The Court does not have to hold a hearing on such
21 a motion at all under the Bankruptcy Rules, and often does
22 not, based on its review of the motion and the standards for
23 having one be granted under Rule 59 and Rule 60.

24 Because Ms. Goldberger didn't attend the original
25 hearing in November and because she's pro se, we did

1 schedule it. But it was adjourned because all the other
2 matters on the calendar before today's hearing were
3 adjourned while I was still active on the bench.

4 When I retired, I kept jurisdiction, as I said,
5 over the matters that were covered for today. But I did not
6 keep jurisdiction over this matter. And that's why it's not
7 on the calendar for today. It will be scheduled by Judge
8 Lane and you should deal with his chambers to have it be
9 heard, if he determines to hear it. Again, he may decide
10 that based on his review of the motion, the transcript of
11 the hearing that I held on the claim objection and my order,
12 and the case law interpreting motions for vacature of an
13 order or reconsideration, that he doesn't need a hearing.
14 He may just issue an order.

15 But that's why it's not on for today. And it's
16 really not a basis for me to put off the matters that were
17 on for today, including these two fee applications, for me
18 to hear this. Frankly --

19 MS. GOLDBERG: Your Honor, may I speak?

20 THE COURT: Frankly, Ms. Goldberger, if I were to
21 hear today, I would deny --

22 MS. GOLDBERG: (indiscernible) this motion --

23 THE COURT: -- because I would have --

24 MS. GOLDBERG: This objection --

25 THE COURT: -- all my cards on the table.

1 Frankly, if I did hear it today, I would deny it because it
2 doesn't meet the standards.

3 MS. GOLDBERG: This objection is not based on
4 those motions. 2:40:28 They're based on 10488, which is a
5 motion to just simply acknowledge my -- the employment and
6 type of work performed. Not based on the motions of 265 or
7 26517.

8 THE COURT: But you don't need any --

9 MS. GOLDBERG: Both back in November --

10 THE COURT: You filed a claim. It's still extant
11 as far as an unsecured claim. So you don't need any further
12 order on that. It's --

13 MS. GOLDBERG: The objection is based on
14 incomplete work of the attorney not completing or responding
15 or even making service to motion 10488.

16 THE COURT: But that motion either sought -- and
17 again, you're pro se, so I'm trying to read between the
18 lines of what you're seeking. It either sought
19 reconsideration of my earlier or it's seeking relief that
20 you don't need and that I couldn't granted this time, which
21 is a determination that your unsecured claim should be
22 allowed? And there's no reason to have anyone spend any
23 money or time on that because, as I noted earlier in this
24 hearing, it's highly that unsecured claims will receive any
25 distribution in the case. So --

1 MS. GOLDBERG: So I'm seeking -- I'm seeking
2 acknowledgment of employment and the type of work performed,
3 which is Motion 10488.

4 THE COURT: Well --

5 MS. GOLDBERG: Nothing to do with --

6 THE COURT: I understand, but that doesn't --

7 MS. GOLDBERG: -- what (indiscernible).

8 THE COURT: That doesn't apply -- there's no such
9 thing as an acknowledgment of work performed that I would
10 decide. You filed a proof of claim. The Debtor has a
11 period in which to object to it. That period hasn't run.
12 It just sits there.

13 MS. GOLDBERG: Okay. And there was no objection
14 to the Motion 10488, which was submitted on June 15th, which
15 leaves us unopposed.

16 THE COURT: It wasn't clear to me whether it --
17 what it was seeking. If it was seeking reconsideration of
18 the disallowance of the administrative expense or secured
19 nature of your two claims, or Kingdom Seekers' two claims,
20 then it would be denied.

21 MS. GOLDBERG: The motion was seeking -- demand an
22 acknowledgment of employment and the type of work performed.

23 THE COURT: All right. I'm going to say this one
24 more time --

25 MS. GOLDBERG: -- that I was an employee --

1 THE COURT: I'm going to cut this off. There is
2 no such thing as an order granting a motion to acknowledge
3 employment. That's not -- it doesn't fall within any relief
4 that I can grant. You filed a claim on that basis. The
5 claim is there. And it will be determined in due course, if
6 there is a reason to do it. At this point, there is no
7 reason to do it because there's no distribution on general
8 unsecured claims anticipated.

9 MS. GOLDBERG: Thank you, Your Honor.

10 THE COURT: Okay. All right. So that leaves --
11 there really are -- to the extent that they still exist --
12 I'm not really sure they do. I'm overruling the objections
13 to the fee applications of Akin Gump and Weil Gotshal.

14 I appointed a Fee Examiner in this case. I'm not
15 a huge fan of fee examiners generally. I think they are
16 warranted in large cases and that is because it can become a
17 very difficult task for the Court to deal with multiple fee
18 applications over an extended time that are in many cases
19 quite lengthy, and the Court then properly -- as does the
20 U.S. Trustee -- rely on work done by a fee examiner. And I
21 think we had an active and quite capable of the examiner
22 here.

23 His concerns have been resolved. I know that in
24 the past, some fee examiners have just said I need this,
25 without any reference to the standard under Section 330.

1 I'm assuming that based on the settlements here, that wasn't
2 the case.

3 In any event, I have considered that the
4 applications of the applicants during the case. And in
5 these final the applications, I have considered the largest
6 ones, again, those being Akin Gump's and Weil Gotshal's.
7 And I have reviewed them in the light of the standard set
8 out by Congress in Section 330 of the Bankruptcy Code, which
9 states that in determining the amount of reasonable
10 compensation to be awarded, the court shall consider the
11 nature and the extent and the value of such services, taking
12 into account all relevant factors, including the time spent
13 on such services, the rates charged for such services,
14 whether those services were necessary to the administration
15 of or beneficial at the time at which the service was
16 rendered, toward the completion of a case under this title;
17 whether the services were performed within a reasonable
18 amount of time, commensurate with the complexity, importance
19 and nature of the problem, issue or task addressed, and (e)
20 whether the compensation is reasonable based on the
21 customary compensation charged by comparably skilled
22 practitioners in cases other than cases under this title.

23 The next section is Subsection of Section 330,
24 Subsection 4(a) states, the court shall not allow
25 compensation for unnecessary duplication of services or

1 services that were not reasonably likely to benefit the
2 debtor's estate or necessary to the administration of the
3 case.

4 It's an objective inquiry, based on what services
5 a reasonable lawyer or legal firm would have performed in
6 the same circumstances. See *In re Ames Department Stores,*
7 *Inc.*, 76 F.3d 66, 72 (2d Cir. 1996). And given the focus of
8 the state on what was reasonable at the time the service was
9 rendered, the Court should not invoke perfect hindsight.
10 See, for example, *In re Angelika Films, 57th, Inc.*, 227 B.R.
11 29, 42 (Bankr. S.D.N.Y. (1998), *aff'd* 246 B.R. 176 (S.D.N.Y.
12 2000).

13 And indeed, the benefit and necessary criteria of
14 Section 330 do not require a professional to be 100 percent
15 successful. They're satisfied if a reasonable attorney
16 would have believed at the time that a particular service
17 would benefit the estate, taking into consideration the
18 chances of success and a reasonably projected attendant
19 cost. *Id.*

20 The Code makes it clear that the Court should look
21 at whether the compensation is based on customary
22 compensation charged by comparably skilled practitioners in
23 cases other than cases under this title. That has led
24 courts to state that the inquiry is often a market-driven
25 approach, that is, if the Debtor's professionals who the

1 court has previously approved charge the same amount or
2 comparable amounts as the applicable market for comparable
3 services, that the court would need good and articulate
4 reasons to reduce their fees as excessive. See Zolfo,
5 Cooper Co. v. Sunbeam-Oster Co., Inc., 50 F.3d 253, 258-60
6 (3d Cir. 1995) and In re Raytech Corp., 241 B.R. 785, 785-90
7 (D. Conn. 1999).

8 A corollary is that when they presume subject to
9 rebuttal that the staffing and other practical decisions
10 made by attorneys whose retention has been authorized by the
11 court have been made in good faith, in view of their legal
12 and ethical responsibilities. Obviously, subject to
13 Congress' concern about avoiding unnecessary duplication of
14 effort. In re Drexel Burnham Lambert Group, Inc., 133 B.R.
15 13, 23 (Bankr. S.D.N.Y. 1991).

16 And that's also in light of the fact that the
17 applicant still bears the burden of proving reasonableness
18 of compensation. Zeisler & Zeisler v. Prudential Insurance
19 Company, 210 B.R. 19, 24 (B.A.P. 2d Cir. 1997).

20 It's also the case that consistent with a market-
21 driven approach, the Court, and frankly, a fee examiner as
22 well, should review bills in the light of the normal billing
23 judgment that would be expected of a law firm by its client.
24 Again, it is clearly the case the clients will often obtain
25 a reduction of a fee based on discussions tween the client

1 and the firm over what was appropriate billing judgment.
2 Again, see Zolfo, Cooper Co. v. Sunbeam-Oster Co., Inc., 50
3 F.3d 253, 259.

4 Courts determining the applications, that is,
5 bankruptcy courts, enjoy wide discretion in determining
6 reasonable fee awards. See Zeisler & Zeisler v. Prudential
7 Insurance Company, 210 B.R. 19, 24., and In re Raytech
8 Corp., 241 B.R. 785, 788. And given the fact that they have
9 a great deal of experience in reviewing fee awards, and when
10 it happens, objections to them, it's understandable why that
11 discretion is granted. Zolfo, Cooper Co. v. Sunbeam-Oster,
12 Inc., 50 F.3d 253, 329.

13 I have noted nits and gnats in the applications
14 that I believe would have been picked up and have been
15 picked up by the Fee Examiner. The big question for me is
16 not that, but rather whether these firms, which no one has
17 disputed are working at market rates, somehow made decisions
18 that at the time, in light of the facts known at the time,
19 led to over-billing.

20 I have concluded that the agreements that have
21 been reached take those factors into account and will not
22 further reduce the applications. The work generally done in
23 this case involved a number of very complex issues, none
24 more complex than weighing the alternatives of a litigated
25 approach to the hilt against the Debtors' owner and related

1 parties, including board members, and pursuing the sale
2 approach. Neither was clear, as a clear option.

3 There are pros and cons to each of them, and the
4 ultimate result related to the Transform sale involved
5 serious concessions by Transform related to litigation
6 claims that could only have been obtained after extensive
7 analysis, preceded by extensive discovery.

8 The remaining claims against those parties were
9 pursued aggressively and I have asked himself whether the
10 cost of that pursuit was too high. And I've decided that
11 given the agreed reductions, it was not. I say that in part
12 because I understand the cost of high-stakes multiparty,
13 multi-issue litigation, including the need to retain experts
14 who could be available not only for trial, but also for
15 negotiations and setting trial strategy.

16 Those expenses are a large portion of the Akin
17 Gump litigation fees. And until the market changes, if it
18 ever will, and market rates go down, that type of litigation
19 is just very expensive.

20 So I will grant the fee applications in the
21 revised amounts sought.

22 MR. SCHROCK: Thank you. Thank you very much,
23 Your Honor. We'll make those changes (indiscernible) link
24 to the order. And on behalf of the Debtors, I believe that
25 that concludes the matters on the agenda. And I just want

1 to note that it's been an honor and privilege to be able to
2 appear before you, and I wish you the very best in your
3 retirement.

4 THE COURT: Well, thank you. I wish all of you
5 the very best too. So, I'll look for both of those orders.
6 Oh, you know, I'm sorry. I did not address one specific --
7 two specific applications, and I should do that.

8 In addition to their the applications, the two
9 counsel to the Retirees' Committee asked to raise the cap on
10 their fees that I had set when I authorized the formation of
11 the Committee. I'm aware of the work that they did, which
12 was more extensive -- was required to be more expensive than
13 I had originally thought. It might be.

14 I always had in mind that the cap might be raised
15 if in fact there was more work to do and they did it. And
16 there is no objection to the amounts that they have sought
17 to split between them, the \$175,000. In fact, the Fee
18 Examiner specifically addressed that applications and stated
19 that he has no objection to it as far as the time records
20 and the work that was done. And I don't either.

21 So, that should be covered in the order and it
22 will be covered, but I just wanted to note that on the
23 record.

24 So, I'll look for the fee order with the added
25 footnotes that I discussed with Mr. Fail, as well as the

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1 order on the settlement agreement that we already discussed.
2 And separately, the order on the substantial contribution
3 application, which should come along the time records and I
4 can review those. So that order won't be entered as soon as
5 the other ones, but it'll be entered promptly.

6 Okay. Thank you, all.

7
8 (Whereupon these proceedings were concluded at
9 1:08 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: September 2, 2022

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